

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 In re:

5 Chapter 11

6 PURDUE PHARMA L.P., et al.,

Case No. 19-23649-rdd

7 (Jointly Administered)

8 Debtors.

9 - - - - - x

10
11 United States Bankruptcy Court

12 300 Quarropas Street

13 Room 147

14 White Plains, NY 10601

15
16 March 9, 2022

17 1:05 p.m.

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19
20
21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24
25 ECRO: UNKNOWN

1 HEARING re Notice of Agenda for March 9 and 10, 2022 Hearing
2 at 1PM (ECF #4466)

3
4 HEARING re Opposition Limited (related document(s)4410,
5 4411) filed by Allen Joseph Underwood II on behalf of
6 Certain Canadian Municipality Creditors and Canadian First
7 Nation Creditors. (ECF #4487)

8
9 HEARING re Response to Motion to Approve Settlement Term
10 Sheet (related document(s)4410) filed by Todd E. Phillips on
11 behalf of Multi-State Governmental Entities Group. (ECF
12 #4486)

13
14 HEARING re Objection to Motion to Approve Settlement Terms
15 (related document(s)4410) filed by Hunter J. Shkolnik on
16 behalf of Lake County, Trumbull County. (ECF #4485)

17
18 HEARING re Objection to Motion U.S. Trustee's Opposition and
19 Reservation of Rights to Debtors' Motion for an Order
20 Authorizing and Approving Settlement Term Sheet (related
21 document(s)4410) filed by Paul Kenan Schwartzberg on behalf
22 of United States Trustee. (ECF #4484)

23
24 HEARING re Objection to Motion to Approve Settlement Term
25 Sheet (related document(s)4410) filed by Hunter J. Shkolnik

1 on behalf of Nassau County. (ECF #4483)

2
3 HEARING re Motion to Approve / Motion of Debtors Pursuant to
4 11 U.S.C. § 105(a) and 363(b) for Entry of an Order
5 Authorizing and Approving Settlement Term Sheet filed by Eli
6 J. Vonnegut on behalf of Purdue Pharma L.P. (ECF #4410)

7
8 HEARING re Motion to Shorten Time / Debtors' Ex Parte Motion
9 for Entry of an Order Shortening Notice with Respect to the
10 Motion of Debtors Pursuant To 11 U.S.C. §§ 105(a) and 363(b)
11 for Entry of an Order Authorizing and Approving Settlement
12 Term Sheet (related document(s)4410) filed by Eli J.
13 Vonnegut on behalf of Purdue Pharma L.P. (ECF #4411)

14
15 HEARING re Objection to Motion of Debtors Pursuant to 11
16 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing
17 and Approving Settlement Term Sheet (ECF No. 4410) and
18 Joinder to The State of Florida's Objection to Motion of
19 Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry
20 of an Order Authorizing and Approving Settlement Term Sheet
21 (ECF No. 4413) (related document(s)4410) filed by
22 Christopher B Spuches on behalf of The Territory of American
23 Samoa. (ECF #4480)

24
25 HEARING re Objection to Motion of Debtors Pursuant to 11

1 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing
2 and Approving Settlement Term Sheet (ECF No. 4410) and
3 Joinder to The State of Florida's Objection to Motion of
4 Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry
5 of an Order Authorizing and Approving Settlement Term Sheet
6 (ECF No. 4413) (related document(s)4410) filed by
7 Christopher B Spuches on behalf of The Commonwealth of
8 Puerto Rico. (ECF #4478)

9
10 HEARING re Objection to Motion for Entry of an Order
11 Authorizing and Approving Settlement Term Sheet (related
12 document(s)4410) filed by Peter D'Apice on behalf of Tribal
13 Leadership Committee. (ECF #4474)

14
15 HEARING re Objection to Motion to Approve Terms (related
16 document(s)4410) Filed by James Franklin Ozment I on behalf
17 of Creighton Bloyd. (Ozment, James) (ECF #4473)

18
19 HEARING re Objection to Motion The State of Alabama's
20 Joinder to The State of Florida's Objection to Motion of
21 Debtors Pursuant to 11 U.S.C. § 105(A) and 363(B) For Entry
22 of an Order Authorizing and Approving Settlement Term Sheet
23 [ECF No. 4413] (related document(s)4410) filed by Eric J.
24 Snyder on behalf of State of Alabama. (ECF #4472)

25

1 HEARING re Objection to Motion / Ad Hoc Committee's Limited
2 Objection to Debtors' Motion to Approve Settlement Term
3 Sheet (related document(s)4410) filed by Kenneth H. Eckstein
4 on behalf of Ad Hoc Committee of Governmental and Other
5 Contingent Litigation Claimants. (ECF #4471)

6
7 HEARING re Objection to Motion of Debtors Pursuant to 11
8 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing
9 and Approving Settlement Term Sheet (ECF No. 4410) and
10 Joinder to The State of Florida's Objection to Motion of
11 Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry
12 of an Order Authorizing and Approving Settlement Term Sheet
13 (ECF No. 4413) (related document(s)4410) filed by
14 Christopher B Spuches on behalf of State of Missouri, by its
15 Attorney General Eric S. Schmitt. (ECF #4470)

16
17 HEARING re Objection to Motion of Debtors Pursuant to 11
18 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing
19 and Approving Settlement Term Sheet (ECF No. 4410) and
20 Joinder to The State of Florida's Objection to Motion of
21 Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry
22 of an Order Authorizing and Approving Settlement Term Sheet
23 (ECF No. 4413) (related document(s)4410) filed by
24 Christopher B Spuches on behalf of The State of Mississippi.
25 (ECF #4468)

1 HEARING re Objection to Motion The State of Texas's Joinder
2 to the State of Florida's Objection to Motion of Debtors
3 Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an
4 Order Authorizing and Approving Settlement Term Sheet
5 (related document(s)4410) filed by Rachel R Obaldo on behalf
6 of The State of Texas, acting by and through the Attorney
7 General of Texas, Ken Paxton. (ECF #4465)

8
9 HEARING re Objection to Motion of Debtors Pursuant to 11
10 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing
11 and Approving Settlement Term Sheet [ECF No. 4410] and
12 Joinder to The State of Florida's Objection to Motion of
13 Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry
14 of an Order Authorizing and Approving Settlement Term Sheet
15 [ECF No. 4413] (related document(s)4410) filed by
16 Christopher B Spuches on behalf of State of Utah. (ECF
17 #4464)

18
19 HEARING re Statement / Joinder of the State of Tennessee to
20 the State of Florida's Objection to Motion of Debtors
21 Pursuant to 11 U.S.C. 105(A) and 363(B) for Entry of an
22 Order Authorizing and Approving Settlement Term Sheet
23 (related document(s)4413) filed by Marvin E. Clements Jr. on
24 behalf of Tennessee Attorney General's Office. (ECF #4462)

25

1 HEARING re Objection to Motion of Debtors Pursuant to 11
2 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing
3 and Approving Settlement Term Sheet [ECF No. 4410] and
4 Joinder to The State of Florida's Objection to Motion of
5 Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry
6 of an Order Authorizing and Approving Settlement Term Sheet
7 [ECF No. 4413] (related document(s)4410) filed by
8 Christopher B Spuches on behalf of The State of

Georgia. (ECF

9 #4461)

10

11 HEARING re Objection to Motion of Debtors Pursuant to 11
12 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing
13 and Approving Settlement Term Sheet [ECF No. 4410] and
14 Joinder to The State of Florida's Objection to Motion of
15 Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry
16 of an Order Authorizing and Approving Settlement Term Sheet
17 [ECF No. 4413] (related document(s)4410) filed by
18 Christopher B Spuches on behalf of The Commonwealth of
19 Kentucky. (ECF #4458)

20

21 HEARING re Objection to Motion /Maria Ecke's Objection to
22 Debtors' Motion to Approve Settlement Term Sheet (related
23 document(s)4410) filed by Maria Ecke. (ECF #4456)

24

25 HEARING re Objection to Motion to Approve (related

1 document(s) 4410) filed by Mark Tate on behalf of Westchester
2 Heavy Construction Laborers Local 60 Health & Welfare Fund,
3 et al. (ECF #4455)
4

5 HEARING re Objection to Motion of Debtors Pursuant to 11
6 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing
7 and Approving Settlement Term Sheet [ECF No. 4410] and
8 Joinder to The State of Floridas Objection to Motion of
9 Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry
10 of an Order Authorizing and Approving Settlement Term Sheet
11 [ECF No. 4413] (related document(s) 4410) filed by
12 Christopher B Spuches on behalf of State of Arizona. (ECF
13 #4453)
14

15 HEARING re Objection to Motion of Debtors Pursuant to 11
16 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing
17 and Approving Settlement Term Sheet [ECF No. 4410] and
18 Joinder to The State of Florida's Objection to Motion of
19 Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry
20 of an Order Authorizing and Approving Settlement Term Sheet
21 [ECF No. 4413] (related document(s) 4410) filed by
22 Christopher B Spuches on behalf of The State of Kansas. (ECF
23 #4451)
24
25

1 HEARING re Objection to Motion of Debtors Pursuant to 11
2 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing
3 and Approving Settlement Term Sheet [ECF No. 4410] and
4 Joinder to The State of Florida's Objection to Motion of
5 Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry
6 of an Order Authorizing and Approving Settlement Term Sheet
7 [ECF No. 4413] (related document(s)4410) filed by
8 Christopher B Spuches on behalf of The State of South
9 Carolina. (ECF #4449)

10
11 HEARING re Objection to Motion of Debtors Pursuant to 11
12 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing
13 and Approving Settlement Term Sheet [ECF No. 4410] and
14 Joinder to The State of Florida's Objection to Motion of
15 Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry
16 of an Order Authorizing and Approving Settlement Term Sheet
17 [ECF No. 4413] (related document(s)4410) filed by
18 Christopher B Spuches on behalf of The State of Arkansas.
19 (ECF #4447)

20
21 HEARING re Objection to Motion of Debtors Pursuant to 11
22 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing
23 and Approving Settlement Term Sheet [ECF No. 4410] and
24 Joinder to The State of Florida's Objection to Motion of
25 Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry

1 of an Order Authorizing and Approving Settlement Term Sheet
2 [ECF No. 4413] (related document(s)4410) filed by
3 Christopher B Spuches on behalf of The State of North
4 Dakota. (ECF #4445)

5
6 HEARING re Objection to Motion of Debtors Pursuant to 11
7 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing
8 and Approving Settlement Term Sheet [ECF No. 4410] and
9 Joinder to The State of Florida's Objection to Motion of
10 Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry
11 of an Order Authorizing and Approving Settlement Term Sheet
12 [ECF No. 4413] (related document(s)4410) filed by
13 Christopher B Spuches on behalf of The State of Montana.
14 (ECF #4443)

15
16 HEARING re Objection to Motion /Ellen Isaacs' Objection to
17 Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry
18 of an Order Authorizing and Approving Settlement Term Sheet
19 (related document(s)4410) filed by Ellen Isaacs. (ECF #4441)

20
21 HEARING re Objection to Motion of Debtors Pursuant to 11
22 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing
23 and Approving Settlement Term Sheet [ECF No. 4410] and
24 Joinder to The State of Florida's Objection to Motion of
25 Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry

1 of an Order Authorizing and Approving Settlement Term Sheet
2 [ECF No. 4413] (related document(s)4410) filed by
3 Christopher B Spuches on behalf of The State of Alaska. (ECF
4 #4440)

5
6 HEARING re Objection to Motion of Debtors Pursuant to 11
7 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing
8 and Approving Settlement Term Sheet [ECF No. 4410] and
9 Joinder to The State of Florida's Objection to Motion of
10 Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry
11 of an Order Authorizing and Approving Settlement Term Sheet
12 [ECF No. 4413] (related document(s)4410) filed by
13 Christopher B Spuches on behalf of Ohio Attorney General.
14 (ECF #4437)

15
16 HEARING re Objection to Motion of Debtors Pursuant to 11
17 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing
18 and Approving Settlement Term Sheet [ECF No. 4410] and
19 Joinder to The State of Florida's Objection to Motion of
20 Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry
21 of an Order Authorizing and Approving Settlement Term Sheet
22 [ECF No. 4413] (related document(s)4410) filed by
23 Christopher B Spuches on behalf of The State of Nebraska.
24 (ECF #4435)

25

1 HEARING re Objection to Motion of Debtors Pursuant to 11
2 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing
3 and Approving Settlement Term Sheet [ECF No. 4410] and
4 Joinder to The State of Florida's Objection to Motion of
5 Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry
6 of an Order Authorizing and Approving Settlement Term Sheet
7 [ECF No. 4413] (related document(s)4410) filed by
8 Christopher B Spuches on behalf of The State of Louisiana.
9 (ECF #4433)

10

11 HEARING re Objection /State of Indiana's Objection to
12 Debtor's Motion to Approve Settlement Term Sheet and Joinder
13 to the Objection filed by the State of Florida filed by
14 Heather M Crockett on behalf of State of Indiana. (Crockett,
15 Heather). (Related document(s) 4410,4413) (ECF #4418)

16

17 HEARING re Objection /State of West Virginia's Objection to
18 Debtors' Motion to Approve Settlement Term Sheet and Joinder
19 to Objection by the State of Florida (related
20 document(s)4410, 4413) filed by Aaron R. Cahn on behalf of
21 State of West Virginia, ex. rel. Patrick Morrissey, Attorney
22 General. (ECF #4417)

23

24

25

1 HEARING re Objection (related document(s)4410) filed by
2 Christopher B Spuches on behalf of Attorney General, State
3 of Florida. with hearing to be held on 3/4/2022 (check with
4 court for location) (Spuches, Christopher) (ECF #4413)

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25 Transcribed by: Sonya Ledanski Hyde

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17 ALSO PRESENT TELEPHONICALLY:

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20 GEOFF MULVIHILL

21 BERNARD ARDAVAN ESKANDARI

22 EVAN M. JONES

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25 DAVID BROWN

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16 MAGALI GIDDENS
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14 JAMES I. MCCLAMMY
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17 MICHELE MEISES
18 MAURA KATHEEN MONAGHAN
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14 PAUL KENAN SCHWARTZBERG
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16 J. CHRISTOPHER SHORE
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3 ANDREW D. VELEZ-RIVERA

4 JORDAN A. WEBER

5 MARTIN WEIS

6 THEODORE WELLS

7 JACQUELYN KNUDSON

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1 P R O C E E D I N G S

2 THE COURT: Okay, good afternoon. This is Judge
3 Drain, and we're here in In re: Purdue Pharma LP et al.
4 This hearing is being held remotely, primarily by Zoom,
5 unless someone doesn't have access to a screen, in which
6 case they're appearing by telephone.

7 There are two matters on the calendar today.
8 They're closely related. The first is the Debtor's motion
9 for entry of an order shortening notice with respect to the
10 other motion on the calendar, which is the Debtor's motion
11 for entry of an order authorizing and approving a settlement
12 term sheet under 11 U.S.C. Section 363(b) and 105(a). So, I
13 guess we should address the first motion first.

14 You're on mute.

15 MR. HUBENER: Sorry. Many buttons to press on
16 this end, Your Honor.

17 THE COURT: That's fine.

18 MR. HUBENER: Can you hear me clearly now?

19 THE COURT: Yes. Yeah, I can.

20 MR. HUBENER: Your Honor, for the record, Marshall
21 Huebner, Davis Polk & Wardwell, on behalf of the Debtors.
22 And, Your Honor, no party objected to the motion to shorten
23 time. And I think as the Court knows, objections have
24 actually begun coming in, in fact, within about seven hours
25 of the motion being filed, in part because various parties

1 who had advance notice, to some extent, to the best of our
2 ability to provide it, given the confidentiality
3 (indiscernible). The fact that there are, I believe, 35
4 objections (indiscernible) on the docket, I think speaks to
5 the fact that people had an opportunity to craft the
6 objections that they believed appropriate. But most
7 importantly, there are no objections at all to the motion to
8 shorten time, so we would ask as (indiscernible) matter that
9 that be granted.

10 THE COURT: Okay. Just if you can, Mr. Huebner,
11 you're kind of fading in and out. I'm not sure if you can
12 bring your microphone closer. I did hear you, but I think
13 if you don't do that, there's a risk that going forward, you
14 won't be picked up.

15 MR. HUBENER: Yep.

16 THE COURT: So, you're right, there have been no
17 objections to the motion to shorten, and in fact there are
18 35 filed objections to the underlying motion. And the
19 motion to shorten does state, I believe, cause to shorten
20 the notice period, namely the -- one of the benefits of the
21 settlement term sheet is time sensitive, although frankly,
22 all of them are, given the deadlines that were short but
23 extended four times in the mediation, recognizing the need
24 to conclude the mediation promptly. The benefit, besides
25 doing that, was to -- was the agreement by the settling

1 states and the District of Columbia to withdraw their
2 appeals, as set forth on the terms of the term sheet, so I
3 will grant the motion to shorten.

4 MR. HUBENER: Thank you, Your Honor. I am closer
5 to the mic now. Is that better?

6 THE COURT: Yes.

7 MR. HUBENER: Okay, terrific. So, Your Honor, one
8 other (indiscernible) matter or program matter before I
9 start. Number one, in connection with the hearing, just so
10 the Court is aware, we established 1,000 phone lines on the
11 (indiscernible) Debtor's side to allow for as much
12 participation as --

13 THE COURT: You're still fading in and out. I'm
14 sorry.

15 MR. HUBENER: Hold on, let me -- I have this
16 super-fancy thing, but I guess it's not working very well.

17 THE COURT: Well, sometimes, fancy things don't.

18 MR. HUBENER: Yeah, I know. I usually just do it
19 with my headphones on, and I've never had a problem. I now
20 have this Poly speaker basically right next to me. Is this
21 clear?

22 THE COURT: Yes.

23 MR. HUBENER: Okay.

24 THE COURT: Okay.

25 MR. HUBENER: I'll do my best to sort of keep it

1 right nearby.

2 THE COURT: Okay.

3 MR. HUBENER: So, Your Honor, I was starting to
4 say, and I apologize, we did arrange for 1,000 phone lines
5 to allow for as much participation as possible, especially
6 given, obviously, tomorrow's victim portion of the hearing.
7 We did want to thank various parties who worked with us on
8 that.

9 In that regard, although I know that your chambers
10 and deputy indicated at the outset, I do want to reiterate,
11 especially in terms of tomorrow, I think that there will
12 likely be some unbelievably searing, difficult, and personal
13 statements that will take an incredible amount of courage
14 for people to give, you know, with hundreds or 1,000 people
15 listening. Obviously, as Your Honor noted last week, it is
16 a court proceeding, and so screenshots and making audio
17 recordings or making video recordings of the screen I think
18 would be, not only I think illegal, but do an unbelievable
19 disservice to the victims, who certainly have a right to
20 expect that their privacy will be respected within the
21 context of a very large and important hearing.

22 So, whatever the official channels are, I know
23 people are working to broaden those as much as possible, it
24 would be impossible to overstate how much we agree with
25 that. But it is also important that nobody undertake to

1 violate legal rules and procedures with unofficial channels,
2 you know, and God forbid, capturing and posting on YouTube
3 the victim statements for their own separate purposes. And
4 so, just because that was stated before the Court got on, I
5 thought it was important to quickly mention that and
6 (indiscernible) the record and the transcript.

7 THE COURT: Okay.

8 MR. HUBENER: Third, Your Honor, as our motion
9 makes clear, and as I think all parties are aware, the
10 motion, and really the term sheet underlying it, are the
11 result of nine weeks of really literally around the clock,
12 virtually every single day, every Saturday, every Sunday,
13 every week day, very difficult, often hard fought
14 negotiations, primarily among and between the Sacklers and
15 the -- well, we'll call it the nine, just the eight
16 appealing states, all of which were guided by the
17 indefatigable hand of Judge Shelley Chapman and her clerks.
18 And I at least want to stop before we begin to thank Judge
19 Chapman for her just extraordinary, extraordinary, unceasing
20 efforts -- 3:00 in the morning, 2:00 in the morning, until
21 1:00 in the morning -- and her dedication not only to this
22 mediation, but to its also very important predecessor
23 mediation that resulted in the settlement prior to this one.

24 THE COURT: Well, I agree with that. Both to
25 Judge Chapman and to her staff, her clerk, I and everyone in

1 this case really has a real debt of gratitude.

2 MR. HUBENER: Your Honor, one last thing before I
3 jump into the merits, which really, I guess, arises out of
4 the agenda letter. We are obviously aware that there are 35
5 objections, and that is unfortunate, and this we'll talk
6 about in a few minutes because, you know, we understand, and
7 we have some sympathy for some of those objections.

8 It should also be noted, though, that because the
9 reply deadline was very recently, given the extremely short
10 time, there are also some very important supporting
11 statements that were filed on the docket, one by the MSGE,
12 which represents the munis, who are, in fact, very material
13 beneficiaries, I think in their mind, of in fact a majority,
14 the plurality of the consideration being provided under the
15 plan and a very important constituency. The UCC, of course,
16 which is the official DOJ-appointed representative of every
17 unsecured creditor in this case, because we have no secured
18 creditors -- they actually represent the entire creditor
19 body -- and we have the joinders filed by the NAS and the
20 hospitals.

21 I also think it's important to note, Your Honor,
22 that there are a huge number of parties, both states -- you
23 know, 29 or so of them -- and many other parties who did not
24 object. The fact that a form of joinder that is virtually
25 identical was filed by a single law firm makes it clear that

1 efforts were clearly undertaken, which we fully respect, to
2 facilitate as many parties objecting as could be, you know,
3 talked to and encouraged to do so. And obviously, there are
4 618,000 filed claims in this case, and obviously, we've had
5 many hearings with very robust participation. And whether
6 the sort of silent super, super majority who did not appear
7 today did so because they (indiscernible) support the relief
8 or because they've decided not to object to the relief,
9 maybe even reluctantly decided not to object, I don't know,
10 and it's not for me to say. But it should be remembered,
11 when confronted with an agenda letter that -- virtually, a
12 couple of pages listing the objections in a case of this
13 extraordinary size, scope, and complexity, that in no way,
14 shape, or form speaks for the majority of the creditors in
15 this case, not even remotely.

16 Your Honor, I'd like to spend a few minutes
17 turning to the actual underlying substance. As we noted in
18 our reply brief, what is actually being asked of the Court
19 in terms of the relief granted is, in fact, quite narrow.
20 But what is at issue if the relief is granted is actually
21 quite extraordinary. And I also want to talk about what
22 everyone, including every one of the objectors, stands to
23 lose if the proposed order is not granted.

24 If the motion is granted and the plan settlement
25 is enhanced by the agreements of the term sheet ultimately

1 go effective, the estates will receive a guaranteed minimum
2 of \$898 million more, up to a total maximum of \$1.398
3 billion in incremental settlement payments by the Sacklers
4 for opioid abatement, all to improve and save lives. If
5 today's relief is denied, the Sacklers will keep every penny
6 of those funds.

7 If today's relief is granted, every institution
8 and organization in the United States can erase the Sackler
9 name from their buildings, programs, scholarships,
10 endowments. If today's relief is denied, many of those
11 institutions will likely face the legal risks
12 (indiscernible) of donor naming rights policies and possible
13 litigation.

14 If today's relief is granted, a material and
15 currently unresolved contingency to the effectiveness of the
16 current plan, the need to obtain approvals from multiple
17 governmental entities to change the membership of existing
18 Sackler-established foundations is removed, and the hard-
19 fought and important foundation agreements obtained by the
20 group of 15 in the last round of mediation will be replaced
21 by something yet better: \$175 million, in cash, on the
22 effective date. If today's relief is denied, that currently
23 unresolved contingency (indiscernible) remains unresolved.

24 Your Honor, I am hearing feedback. I'm not sure
25 if other people are unmuted, or maybe even, for some reason,

1 it's the Court's microphone, which I apologize. I do note
2 that I've never heard that before. It's always been silent,
3 and there is a lot of feedback today.

4 THE COURT: I'm hearing you fine, and I'm not
5 hearing feedback.

6 MR. HUBENER: Perfect.

7 THE COURT: I'm sorry if you're hearing it. If
8 others are --

9 MR. HUBENER: Well, as long as the Court can hear,
10 it doesn't matter what happens to me.

11 If today's relief is granted, the nine will
12 consent to the plan releases, forego filing their appeal
13 briefs due this Friday, and otherwise cease participating in
14 the appeals, which also removes multiple issues from the
15 appeals, although the appeals will not be issues before the
16 Second Circuit, but potential issues on further remand after
17 that. Although the appeals will, unless we can convince the
18 other appellants to stand down, still proceed on the
19 schedule set by the Second Circuit, having the nine withdraw
20 from the appeals will hopefully go a long way to
21 facilitating the Debtors' emergence from Chapter 11 and may
22 well accelerate the conclusion of these cases, potentially
23 by several months.

24 In short, it is undeniable, and in fact it is
25 uncontested that the term sheet will deliver, at basically

1 zero cost to and zero concession from the Debtors and their
2 estates, multiple, massive, direct and indirect benefits to
3 the estates and all of their creditors, including by
4 lowering the risk of a value-destructive liquidation, in
5 which even the \$4.325 billion already committed to the
6 estates under the existing settlement agreement, as well as
7 the Debtors themselves, could likely be lost.

8 THE COURT: So, can I interrupt you? You phrased
9 this portion of your argument in two ways. One is, if
10 approval of this motion is granted, the following will
11 happen; and then, if it is not, what will happen. But I
12 want to be clear in my understanding. If I grant this
13 motion, those things won't happen; rather, conditions to
14 those things happening will happen, right? The relief,
15 under the term sheet, is conditioned upon an order
16 confirming the plan, or a plan, that is currently on appeal,
17 and that appeal would have to be successful, right, for
18 those benefits of the term sheet to apply, right?

19 MR. HUBENER: Your Honor, there is a single --

20 THE COURT: With the exception of the withdrawal
21 of the appeals by the nine.

22 MR. HUBENER: Yeah, Your Honor, I would say this.
23 I think the order, we hope, was quite carefully drafted to
24 make clear which things are conditional, which is actually
25 most of it, on the appellate process going the right way,

1 and as it were, clearing the plan for takeoff. The thing
2 that is not conditional is a ruling that is required today -
3 - or tomorrow -- as a predicate to the nine not filing their
4 briefs, that the direct payments contemplated to be made by
5 the nine to the Sacklers don't contravene prior orders of
6 this Court or the Bankruptcy Code.

7 THE COURT: Well, could I -- I want to ask you
8 about that point as well. The order does say that, the
9 proposed order. The term sheet, as I read its definition of
10 the "approval order," doesn't say that. It does not include
11 in it a requirement that the Court find that "the agreements
12 do not contravene any prior orders of the Court in these
13 cases." It just says that they do not contravene any
14 provision of the Bankruptcy Code.

15 MR. HUBENER: Yeah, Your Honor, that's true. I
16 think that, you know, as you might imagine, the proposed
17 order was sent around to parties, and someone put that in.
18 Candidly, I can't think of a prior order of this Court that
19 it would contravene, and I can't imagine that Your Honor
20 would allow it, if you thought it violated an order you had
21 entered. And no objector has alleged, out of the 35
22 objections, that it contravenes any prior order of this
23 Court. They merely believe -- and we'll talk about that at
24 some length in a few minutes -- that it potentially violates
25 various sections of the Bankruptcy Code.

1 So, you're right; I think in that respect, the
2 form of order has a clause in it that is not in the term
3 sheet. I would imagine that if Your Honor found that to be
4 a problem, we probably aren't getting through today
5 successfully in any event. But if you feel that it's
6 important to strike it because you simply can't or won't
7 review in your mind or otherwise every order you've ever
8 entered for possible conflict, given that it does go beyond
9 what's in the term sheet, I'm just going to take a flier
10 from the podium that people will be content to have the
11 order actually do what the term sheet contemplated that it
12 does.

13 THE COURT: Okay, well, that was my concern. I've
14 entered a lot of orders in this case. The docket is almost
15 5,000 entries long. Those aren't all orders, of course.
16 But that is a concern of mine.

17 And the other language, "any provision of the
18 Bankruptcy Code," I think is what was in the definition of
19 approval order. And, more importantly, since the agreements
20 set forth in the term sheet do contemplate, as far as the
21 release and injunctive provisions, reversal on appeal at the
22 Second Circuit, I can understand the logic of that clause.
23 Because I'm obviously not being asked to overrule Judge
24 McMahon. I couldn't possibly do that, you know, as a matter
25 of jurisdiction. And I couldn't also decide the appeal

1 before the Second Circuit. That's equally bizarre. But the
2 term sheet doesn't contemplate that in asking for this
3 relief, because it contemplates, as a condition to the
4 effectiveness of the transactions, except for the withdrawal
5 of the appeal and the agreement to pay the professional
6 fees, which would be effective now, that -- the condition
7 subsequent, that there be a ruling by the Second Circuit
8 that would enable the plan to be confirmed.

9 MR. HUBENER: Yeah, so, Your Honor, just to sort
10 of triple down on that, right, not only is there no whisper
11 of a hint of a peppercorn of a request that you in any way,
12 shape, or form touch the 10.7 releases, Judge McMahon's
13 decision, the issues on appeal, or anything before the
14 Second Circuit, which would of course be unthinkable for
15 reasons anyone who went to law school would understand, the
16 order is quite clear on its face in Paragraph 3, and that
17 was exactly the point, which is that it is effective only
18 upon entry of one or more orders by the Court of Appeals for
19 the Second Circuit or the United States District Court for
20 the Southern District of New York permitting the
21 consummation of the plan, as enhanced by the term sheet.

22 And so, you're right, I actually -- you elegantly
23 corrected me. There are two things that are relevant now.
24 One is the paragraph that relates to the statement that the
25 direct payments don't contravene the Bankruptcy Code. The

1 second is the approval, subject to their compliance with all
2 applicable fee reimbursement mechanics and procedures to the
3 payment of the fees and expenses of the nine, which is what
4 we'll talk about in a few minutes, currently standing at
5 \$2.5 million, and I think are probably going to end up being
6 a very, very small fraction of similar (indiscernible) paid
7 for other similarly situated groups and parties.

8 Your Honor, is that helpful?

9 THE COURT: Yes. Yeah, no, it is.

10 MR. HUBENER: And again, I will touch some of
11 these things as we go through, because obviously, the
12 objections, I think in many respects, either misunderstand
13 or mischaracterize what we are and are not seeking to do
14 (indiscernible) the appeal.

15 And so, Your Honor, at the end of the day, no
16 objection actually objects to the overwhelming majority of
17 what is contained in the sort of business deal in the term
18 sheet. Rather, they virtually all focus on one provision,
19 which is the direct agreement by the Sacklers to pay, from
20 their own funds and not in any way, shape, or form under the
21 plan, through the plan, or via the plan, approximately \$277
22 million over 18 years to a supplemental opioid abatement
23 fund, or SOAF, established and administered by the nine for
24 abatement.

25 Your Honor, the Debtors fully recognize that these

1 contemplated SOAF payments, by third parties, to third
2 parties, even though they are for abatement and to alleviate
3 harm and misery, are nonetheless offensive to many. So many
4 parties have worked for so long for the common good in these
5 cases, and the objectors are of course completely correct
6 that no party has, to date, requested incremental separate
7 consideration of this type for what they helped achieve.

8 Let me be both clear and direct, so there is no
9 possibility of confusion or misunderstanding. The Debtors,
10 like many of the objectors, would likewise very strongly
11 have preferred to see 100 percent of the new consideration
12 being paid by the Sacklers under the term sheet given to the
13 estates and distributed in accordance with the plan, which
14 would have likely made today's hearing all but uncontested.
15 But, as set forth in our reply brief, neither the Debtors'
16 nor the objectors' preference, no matter how laudable or
17 understandable, have any bearing on the legality of the SOAF
18 payment under the Bankruptcy Code, the only question
19 actually up for today, or on the far, far larger
20 overwhelming and unquestionably lawful and uncontested
21 benefits to the estates and their creditors contained in all
22 the rest of the provisions of the term sheet.

23 The nine appealed this Court's order confirming
24 the plan. They were the only states to do so. And to the
25 shock and horror of so many, they temporarily have

1 prevailed. The term sheet includes, among many other
2 things, payments by the Sacklers from their own funds to the
3 appellants to resolve, among several other things, the
4 appellants' appeals. Every single day, in courthouses all
5 across our great country, appeals are settled by litigants
6 paying other litigants money. This aspect of the term sheet
7 is as quotidian and ubiquitous as it is lawful.

8 Indeed, as a hopefully helpful thought experiment,
9 imagine the following scenario. There was no court-ordered
10 mediation, and we all woke up two or three weeks ago and
11 read in the newspapers that the Sacklers and the nine had
12 settled their issues for a direct payment of \$277 million,
13 and that, having gotten their wire transfer the prior
14 evening, the nine had withdrawn their appeals and no longer
15 contested being bound by the plan (indiscernible). Would
16 any party be able to credibly assert in a signed pleading
17 that that was -- that that direct settlement was an
18 amendment to the plan, or that it was a payment by the
19 Debtors, or that it was a payment by the Debtors that was a
20 distribution under the currently not consummated -- and in
21 fact, locked on appeal -- 12th amended plan? Of course not.

22 That the nine insisted that, in addition to their
23 direct settlement payment of \$277 million, all for
24 abatement, that the Debtors' estates also receive between
25 \$898 million and \$1.39 billion does not and could never

1 transmogrify the \$277 million direct payment from a workaday
2 and lawful direct settlement payment, entirely and
3 exclusively among third parties, into an unequal plan
4 distribution by Debtors under a plan of reorganization. And
5 that simple fact, ultimately, is fatal to virtually every
6 legal provision and argument cited by the objectors, so I
7 will now walk through them.

8 One, the SOAF payments are neither funded with
9 estate assets nor being made under the plan. All of the
10 objectors assert, again and again, that the direct payments
11 amend the allocations under the plan or alter the plan's
12 treatment of creditors under Class 4. These statements are
13 untrue and unfounded, and have no possible source in the
14 actual document at issue.

15 The term sheet could not be more clear. The SOAF
16 payments are not being made by a Debtor or from any Debtor's
17 assets. The SOAF payments are not being made to a Debtor or
18 through a Debtor. The SOAF payments are not being made from
19 or on account of estate property. The SOAF payments are not
20 being made pursuant to or even mechanistically distributed
21 under any plan of reorganization. The SOAF payments require
22 no changes to the existing shareholder settlement agreement,
23 other than with respect to layering them in as a very small
24 -- about 5 percent -- additional secured party, which is
25 never, ever expected to have any relevance to or impact on

1 any other party, as it only has potential relevance if the
2 Sacklers default. And given the rights and remedies for
3 which we all negotiated, the notion that they would default
4 we believe to be quite unlikely.

5 Number two, 1123(a)(3) simply has no relevance to
6 the instant motion. Out of the 35 objectors, only West
7 Virginia, and quite briefly at that, alleges that the term
8 sheet is a revised plan that is being proposed in bad faith,
9 in violation of Section 1123(a)(3). Not remotely so. First
10 of all, there is no "revised plan" at all, as our colloquy a
11 few minutes ago makes perfectly clear, and as the papers and
12 the term sheet all make clear.

13 Second, and more importantly, the notion that a
14 settlement that was fiercely negotiated in a mediation
15 amongst third parties before a sitting federal judge, and
16 that results in massive additional value for the Debtors to
17 distribute under the existing plan allocation, and contains
18 myriad other benefits to the Debtors' estates was proposed
19 either by the Debtors or in bad faith is implausible.

20 As I said earlier, the Debtors understand and
21 empathize with the objectors' frustrations about there being
22 SOAF payments. But the SOAF payments just don't involve
23 estate assets and are not being made under the plan or any
24 plan, and the term sheet is massively beneficial to the
25 estate. West Virginia's accusation that the Debtors have

1 proposed a new plan in bad faith has no merit and should be
2 rejected.

3 Three, there is no unequal plan treatment under
4 1123(a)(4). Your Honor, I can't say it more plainly than
5 this. Nothing in the term sheet changes the relative
6 allocation or treatment of any creditor in any class,
7 including Classes 4 and 5, as to which it does one thing.
8 It increases materially the funds being distributed to them
9 under the otherwise unaltered plan and distributional
10 mechanics.

11 Your Honor, they wish they were getting yet more
12 new money, \$1.175 instead of \$898 and \$1.675 billion instead
13 of \$1.398 billion. I understand. But that does not a
14 cognizable 1123(a)(4) objection make. All Class 4 creditors
15 are getting their distributions from NOAT in exchange for
16 the plan's discharge of the Debtors and the third-party
17 releases under Plan Section 10.7. Nothing in the term sheet
18 gives the nine or New Hampshire one penny more than any
19 other class creditor under the plan or otherwise from the
20 Debtors or their estates, other than their share of the
21 increased money coming into the MDT.

22 And of course, the nine and New Hampshire are now,
23 at long last, agreeing to consent and be bound to the exact
24 same releases that bind every other creditor, and that no
25 other Class 4 creditor appealed. The various allocation

1 formulae and trust distribution procedures remain entirely
2 unchanged by the term sheet. It does only one thing with
3 respect to the plan's treatment of creditors in Class 4 and
4 Class 5. It increases the amount they will get to share
5 under the plan's mechanics by \$898 million to \$1.398
6 billion.

7 Your Honor, those are the actual facts, which ends
8 the inquiry. But the law is no less clear and no less
9 helpful. As we lay out in our brief, courts have repeatedly
10 and uniformly held that payments to select creditors from
11 and by third parties do not constitute "treatment" under
12 1123(a)(4). You have ICL from the Third Circuit in 2015.
13 You have TSIC from Delaware in 2008. And you have DBSD from
14 the Second Circuit, which is highly instructive on this
15 point. The Second Circuit drew the line between what is and
16 is not an actual payment by a third party, but left no
17 mistake of any kind that if it's an actual payment by a
18 third party, 1123(a)(4) has no relevance.

19 Indeed, quite and in fact emphatically, unlike
20 here, in many of those cases, the challenged payments were
21 actually being made under the plan, and they were being made
22 from assets that were actually the Debtors' assets but were
23 sort of deemed not the Debtors' assets because they were
24 also the collateral of a secured creditor. Here, we have
25 neither of those two wavy attributes that many courts

1 nevertheless permit. Third parties settling with and paying
2 third parties directly from their own money is leagues and
3 leagues away from the boundaries of what is permissible
4 under 1123(a)(4).

5 Four, the term sheet is not a sub rosa plan. A
6 few of the objectors contend that the SOAF payments somehow
7 constitute a sub rosa plan, relying again on the false claim
8 that the SOAF payments "modify the distribution and
9 allocation model of the plan," and those are the critical
10 words. I've already covered this, and the documents are
11 clear. The SOAF payments do no such thing. They are
12 payments by third parties to third parties from their own
13 assets, and do nothing to change the distribution and
14 allocation model of the plan.

15 I otherwise rest on our papers on the sub rosa
16 issue, except to note one point. In every single case cited
17 by the objectors except for one, the sub rosa objector lost.
18 I think that's pretty telling. And the only case that,
19 seemingly, any objector found where a sub rosa objection
20 ever succeeded happened 39 years ago in the Fifth Circuit in
21 Braniff, which is so different I'm not going to actually
22 take time to distinguish it. I think our papers make the
23 point sufficiently.

24 Number five, jurisdiction. Your Honor, we believe
25 that this argument, yet again, rests on the same fundamental

1 misunderstanding or mischaracterization of the limited
2 relief requested today. It is thoroughly addressed in our
3 papers, including a detailed discussion of the case law,
4 including, once again, their case law, which, once again,
5 virtually all found jurisdiction proper in circumstances
6 relatively analogous to the ones (indiscernible).

7 Simply stated, and as we discussed at the outset,
8 under the term sheet, there are de minimis changes to
9 discrete sections of the settlement agreement attached to
10 the plan, if and when we are cleared for takeoff by the
11 Second Circuit. The order is clear on its face, which is
12 why what we seek today does not remotely implicate any of
13 the cases cited by the objectors.

14 Your Honor, as we said in our brief, not a
15 sentence, not a word, not a letter, not a comma of the plan
16 releases currently on appeal is being changed, touched,
17 amended, revised, broadened, narrowed; absolutely nothing.
18 Nor does anything in the term sheet revise the plan's
19 distributional scheme or any party's distributional rights
20 under the plan. Unless the Court has questions, I will rest
21 on our papers for the rest of jurisdiction, as we think the
22 answer is quite clear.

23 Number six, Your Honor, and there's only seven,
24 which came from only a couple of the objectors, I believe --
25 although maybe I have that wrong -- is that this is an

1 advisory opinion and that today's hearing isn't ripe and
2 could be heard at some time in the future. I think we've,
3 in fact, already discussed this, based on Your Honor's
4 questions. But for the avoidance of doubt, the requested
5 order is in no way advisory. Its entry will result in
6 multiple parties taking immediate action highly beneficial
7 to the Debtors' estates, including notifying the Second
8 Circuit of the settlement and the case of nine refraining
9 from filing their appellate briefs that are due this Friday
10 and withdrawing from the appeal.

11 In attempting to argue otherwise, the objectors
12 strangely assert that the fact that there are conditions
13 precedent to the effectiveness of some -- but notably, Your
14 Honor, by no means all -- of the agreements in the term
15 sheet somehow renders it constitutionally unready for
16 adjudication. That is, of course, wrong.

17 Indeed, just about every plan of reorganization
18 ever confirmed in U.S. bankruptcy history, including ours,
19 contains various conditions precedent. It would be quite
20 the revelation to the U.S. legal system if every plan ever
21 confirmed that had a condition precedent or confirmation
22 order violated the Constitution, and of course, that's not
23 the case. And for that reason, it's not a surprise the
24 objectors have no support whatsoever for this contention.

25 Number seven, payment of the nine's professional

1 fees. Your Honor, I will rest exclusively on our papers for
2 this point, except to note one thing. It is the law of this
3 case three times over that Section 363 is entirely
4 appropriate as the basis for these Debtors to pay certain
5 fees for select groups and committees. I cannot imagine
6 that the state objectors, many of whom have been the primary
7 beneficiary of these orders and payments made in material
8 sums over the last two and a half years on a monthly basis,
9 in fact remotely want this Court to revisit this issue. We
10 request the approval to pay these relatively modest sums
11 that, as I said before, currently total \$2.5 million,
12 pursuant to appropriate procedures, be approved.

13 Your Honor, if it pleases the Court, that
14 completes my opening argument, other than to note one final
15 thing. It would be unthinkable and crushing to so many, for
16 so many reasons, if today's relief were denied and the
17 Sackler family kept \$1.175 to \$1.675 billion, instead of
18 those sums going to abatement, and if the probability of
19 success of these cases that so many parties, including so
20 many of the objectors, have worked so hard for so long to
21 bring to fruition became materially less likely to come to
22 fruition. And so, other than reserving time to address
23 anything from the objectors' oral presentations, Your Honor,
24 I would propose to stop it.

25 THE COURT: Okay. Thank you. I've read all of

1 the pleadings, I believe, that have been filed on this
2 motion, including those in support of the motion that were
3 filed by the official creditors' committee, joined in by the
4 ad hoc committee of NAS children's -- of NAS children and
5 the ad hoc group of hospitals, which also joined in it. And
6 I've also read the response of the multi-state governmental
7 entities group, or the MSGE, in support of the motion. They
8 may want to speak in support of the motion, or they can rest
9 on their papers and just reserve time if they want to
10 respond to something someone else said.

11 I lost the picture. I don't know.

12 CLERK: You're still on.

13 THE COURT: Okay. But I'm happy to hear from
14 them, too, if they want to. Or, again, they can just wait
15 to speak, if some objector says something that they want to
16 respond to.

17 MR. PREIS: Good afternoon, Your Honor. This is
18 Arik Preis --

19 THE COURT: You're coming in faintly, too, Mr.
20 Preis. I'm not quite sure why, but --

21 MR. PREIS: Is this any better?

22 THE COURT: Yes, much better.

23 MR. PREIS: I'm sorry about that. So, can you
24 hear me now?

25 THE COURT: Yes.

1 MR. PREIS: Your Honor, I think -- for right now,
2 I think the UCC would like to make just a few comments in
3 support of the Debtors, and then we'll reserve time for our
4 reply at the end.

5 THE COURT: Okay.

6 MR. PREIS: Okay. Good afternoon, Your Honor,
7 Arik Preis from Akin Gump for the record, on behalf of the
8 Official Committee of Unsecured Creditors.

9 At the outset, we'd like to make something clear.
10 We appreciate all the hard work that the various AGs,
11 including the state of Florida, engaged in to build
12 consensus and to create the so-called intensity fund, the
13 small states fund, and the state political subdivision
14 arrangement in this case. Nothing that we've said in our
15 papers or that we're going to say today could in any way be
16 viewed as a criticism, belittling, or denigration of those
17 efforts. And, although we've had our differences with the
18 AGs in these cases, and continue to do so, we can also
19 appreciate when they are constructive, they work together,
20 and they reach positive (indiscernible).

21 We also want to be clear about something else.
22 Like the Debtors, we would of course have preferred that the
23 nine had not settled for SOAF, but rather, followed the pre-
24 agreed NOAT allocation for the \$277. And we say this,
25 obviously, like Mr. Huebner said, because it would have

1 obviated the need for the hearing today and allowed for a
2 settlement that is unquestionably in the best interests of
3 the estate to be approved on an almost uncontested basis.

4 That being said, we support the entry of the
5 settlement motion. In that regard, the only questions in
6 front of the Court are the following: one, whether the
7 settlement motion presents a settlement that violates the
8 Bankruptcy Code; two, whether the Court has the ability to
9 enter the order; and three, whether the settlement is in the
10 best interests of the estate. I suppose, potentially,
11 there's a question of whether the AHC's threat not to
12 consent to any modifications to the shareholder settlement
13 agreement is made in good faith, but I'll get to that later.

14 With regard to the first and second questions, I'm
15 not going to repeat the arguments that Mr. Huebner went
16 through. With regard to the third question, there is no
17 question the answer is yes. The settlement is a landmark
18 accomplishment in a case that has now dragged on for more
19 than 800 days. And as we pointed out in our papers, this
20 historic event is remarkably accomplished without the estate
21 giving up anything, indeed, without the creditors in this
22 case having to do anything other than support the same plan
23 they supported six months ago.

24 They get the following if the Second Circuit
25 reverses the District Court: one, \$1 billion in new money

1 from the Sacklers, to be used for abatement.

2 Two -- and I want to be specific about this -- the
3 Sacklers' agreement to convert \$175 million of the
4 charitable contribution (indiscernible) to an actual cash
5 payment on the effective date, again, to be used for
6 abatement. I point out that this is a huge concession and
7 has a huge impact for the public side, given the way that
8 the distribution of funds is set forth in the plan. It also
9 buttons up a potential issue that could have arisen under
10 the 12th amended plan.

11 Third, the Sacklers' agreement with regard to the
12 ability of institutions, museums, and other entities to take
13 down the Sackler name, a concession that has been sought for
14 years, and that has a very, very meaningful impact on
15 personal injury claimants, as you'll hear tomorrow.

16 Fourth, the Debtors agree to populate the document
17 repository with certain additional categories of documents,
18 furthering the goal we've had since day one.

19 And fifth, the Sacklers agree that, during the
20 course of the hearing, to allow victims a period of hours to
21 address them publicly, openly, and honestly about how
22 Oxycontin has affected their lives and the lives of their
23 loved ones, as well as to speak directly to the Sacklers
24 about their feelings and emotions. No one can possibly
25 underestimate just how historic tomorrow's session and

1 important it will be.

2 And all creditors, other than the nine, are
3 getting a sixth very important, immediate thing. The nine
4 are agreeing not to pursue their appeal to the Second
5 Circuit, which removes many, but not all, of the appellees,
6 leaving only a non-creditor, along with three pro se
7 victims. Again, no one is being asked to give up anything
8 meaningful in return for these gets.

9 And so, now we come to the objections by the AHC
10 and the states. With regard to the states, as I mentioned
11 earlier, we fully appreciate the work that went into the
12 intensity fund and their view that that is a fair and
13 appropriate way to distribute funds.

14 That being said, and putting aside the fact that
15 the Sackler payments to the SOAF are being done outside of
16 the plan, the bottom line is that the approximately \$220
17 million of SOAF money that would not have gone to the nine
18 anyway is being used for abatement. And while the money may
19 not be going to the states based on the intensity fund, from
20 the UCC's perspective, it is money that is going to fight
21 the opioid epidemic, and therefore is tremendously
22 beneficial for the American public, which is really the
23 creditor body in the case.

24 I want to make four points about this. First, the
25 U.S. is a transient society. We have artificial state lines

1 that divide us, but people cross from state to state all the
2 time. Looked at in this way, we should all be pleased that
3 money is coming in from the Sacklers to fight the opioid
4 epidemic.

5 For instance, let's take the following example,
6 which is a actual example from a PI case. A family that
7 lives in California sends their child to school in Nebraska.
8 While in Nebraska, the child takes Oxycontin and,
9 tragically, dies. Which state gets credit for purposes of
10 the intensity fund for that?

11 Another example: a person lived in Maryland, one
12 of the nine, goes to Florida for a rehab program, and,
13 again, tragically dies of an overdose. Who gets the credit
14 for that? There's no right answer for that. The point is
15 that, from the point of view of the estate, any money coming
16 in for opioid abatement is good.

17 Second, and while we don't denigrate the
18 seriousness with which the objections are pursued, it's just
19 not that believable that any objecting state will seriously
20 oppose a result that nets them significantly more money and
21 provides all the other benefits I listed previously because
22 they don't like that other states are getting too much.

23 Third, something that may be overlooked: while
24 the nine are benefitting from the SOAF and 20 states are
25 objecting, all the others have stayed silent, as Mr. Huebner

1 pointed out. This includes Massachusetts, New York,
2 Colorado, Pennsylvania, North Carolina, and others, who have
3 been among the most vocal in these cases for the last two-
4 plus years, opposing a lot of things early on, until they
5 reached a settlement. And yet, now they are silent. Does
6 this mean that they agree or like the SOAF? No, not at all.
7 But it does mean that they looked at the situation, balanced
8 the various factors, and determined that for the good of the
9 American public, they will hold their noses and not object.

10 Perhaps this is because they're looking at the
11 situation from the point of view of all of us against the
12 Sacklers, and have realized that if the settlement is not
13 approved, we're in a worse position than we are without the
14 extra concessions. And as an estate fiduciary, we
15 appreciate their position.

16 Similarly, we would note that not one, not one
17 private-side claimant, including the PIs, has objected to
18 the settlement, and some are going to speak out or have
19 filed statements in support. This is because they, too,
20 understand that this settlement is unquestionably better for
21 the estate and brings us all one step closer to our goal of
22 victim compensation and opioid abatement.

23 Four, we understand the issue raised by Florida
24 that introducing a SOAF into this settlement could have a
25 detrimental effect in the other intra-AG negotiations in

1 other opioid cases and other non-opioid cases. And we know
2 that if the nine were the 20 and the 20 were the nine, then
3 the nine would likely be objecting to the SOAF for the 20.
4 But we are estate fiduciaries in only these cases, and while
5 we're sympathetic to that issue, it's not an issue that goes
6 into the calculus of what is in the best interests of the
7 estate (indiscernible).

8 With regard to the AHC, they made two objections.
9 First, they would like the nine to use the money in
10 connection with the pre-agreed TDP and the MBT. In a sense,
11 it's the same quasi-objection that (indiscernible). If this
12 were purely an issue of what an individual creditor believes
13 is preferable for itself, we understand. But that's not a
14 legal objection; it's a want-to-have. And from our
15 perspective, as I said, as long as the money is being used
16 for the opioid epidemic in a manner consistent with
17 applicable law, I see no reason why any of the nine needs to
18 follow the pre-agreed TDP.

19 Indeed, I would note that Attorney General Tong
20 with Connecticut has gone on record a few times saying he is
21 looking to use Connecticut's money to set up a victims' fund
22 or a victims' trust. If his goal is to use the money going
23 to Connecticut from the SOAF to provide additional
24 compensation to victims in Connecticut, I can assure you
25 that the PI victims across the country would applaud those

1 efforts, even if, as it turns out, the AHC would not.

2 The second objection that the AHC raises is that
3 it wants to ensure the SOAF money doesn't jump the line to
4 be pari passu with earlier money due in the event of a
5 default. On this, we agree, and we've told the Debtors, and
6 through them, the nine. Indeed, it would be contrary to
7 everything that was previously agreed among the privates and
8 the publics, in the event that one of the Sackler
9 (indiscernible) defaults and that we need to collect from
10 them, and as we go about collecting, we rejigger the payment
11 (indiscernible) between publics and privates. I don't think
12 that's what the (indiscernible), and I can't imagine that
13 that is at all what's part of the settlement. The AHC --

14 THE COURT: Well, could we stop on that point?

15 MR. PREIS: Sure.

16 THE COURT: I don't see any jumping -- I don't see
17 this settlement changing, at all, the terms of the PI
18 treatment under the plan.

19 MR. PREIS: Well, the -- that's what I believed,
20 and I've heard nothing else. The only question is whether
21 the nine believes that, by virtue of their payments being
22 pari passu in the event of an acceleration, that they would,
23 in some way, jump the line and undo the public/private
24 allocation. Again, I don't believe there's anything in the
25 term sheet that says that, and we -- that's exactly what the

1 deal is now and it should be going forward.

2 THE COURT: Okay. And I recognize that the term
3 sheet does contemplate the drafting of an inter-creditor
4 agreement in good faith, in which the Debtor will
5 participate. But I would think that that really would deal
6 with simply the rights of the NOAT and the S-O-A-F, or SOAF,
7 in the event of a default, as opposed to the separate
8 provisions of the plan that deal with the upfront payments.
9 And I'll note that the timing on the payments is consistent
10 with that, as laid out in the -- with that inference, as
11 laid out in Attachment A.

12 MR. PREIS: Thank you, Your Honor.
13 (indiscernible). I'm not done yet, but I didn't know if he
14 wanted to say something.

15 MR. VONNEGUT: Your Honor, this is Eli Vonnegut of
16 Davis Polk. I just wanted to confirm that's correct. The
17 inter-creditor agreement will govern those issues.

18 THE COURT: Well, issues as between the
19 enforcement rights of the NOAT and the -- and the SOAF. But
20 it would be a very different settlement if the proposal
21 would be to change the timing of the payment of the \$700
22 million to the personal injury trust.

23 MR. VONNEGUT: Understood, Your Honor. That
24 timing will not be changed.

25 THE COURT: Okay. All right, thanks.

1 MR. PREIS: Okay, with that, Your Honor, I
2 (indiscernible). But first, their legal arguments are
3 unavailing. Mr. Huebner went through them; I'm not going to
4 repeat them.

5 Second, it's no surprise, however, that the U.S.
6 Trustee is objecting. They undoubtedly do not want to be
7 the only party, other than three pro ses, left appealing
8 confirmation of a plan that would now be supported by every
9 state in the union, as well as every non-governmental group
10 in the case. It would be unfathomable for the U.S.
11 Government to stand in the way of a plan that is devoted to
12 fighting the opioid epidemic and is supported by every
13 economic creditor in the case because the U.S. Trustee's
14 office is using this case to fight nonconsensual third-party
15 releases.

16 In sum, Your Honor, there's simply no legal reason
17 not to approve a settlement that is in the best interests of
18 the estate. And while we completely understand and are
19 sympathetic to many of the nonlegal arguments being made, we
20 are only fiduciaries for this case, this settlement, and
21 this agreed-upon allocation. In that capacity, no one would
22 argue that this settlement is an unbelievable improvement
23 for the American public.

24 The last thing I want to say, Your Honor, is like
25 Mr. Huebner said, we very much appreciate Judge Chapman's

1 time, her dedication to this mediation, her spirit, her hard
2 work, and the way that she invested herself personally over
3 the last two months. Thank you, Your Honor.

4 THE COURT: Okay. Thank you. Again, I'm happy to
5 hear from the other supporters of this, but you shouldn't
6 feel that you have to say anything. But if you want to, you
7 can go ahead.

8 MR. ISRAEL: Good afternoon, Your Honor, Harold
9 Israel on behalf of the ad hoc committee of NAS children.
10 We rest on our papers.

11 THE COURT: Okay. Thank you.

12 MR. MACLAY: And, Your Honor, this is Kevin MacLay
13 for the MSGE group, and I would just like to make a couple
14 of very high-level comments, and then reserve until
15 rebuttal.

16 THE COURT: Okay. Go ahead.

17 MR. MACLAY: Okay. Your Honor, I think our paper
18 makes very clear our concern that, as parties' positions
19 rapidly become entrenched and as people sort of disagree
20 about some of the details of the deal, what could be lost is
21 the enormous benefit that the deal provides to every
22 relevant party, as well as to the country as a whole. I
23 think that probably shines through pretty clearly from our
24 papers.

25 We agree with both the Debtors and the UCC that it

1 would have been better if there hadn't been a separate SOAF,
2 but all of the additional funds had been sent to the NOAT.
3 It would have seemed more consistent with the sort of unity
4 of purpose and public mindedness that have really motivated
5 almost all of the actors in this case since the onset. But
6 it's not something that should dynamite the substantial
7 progress that Judge Chapman oversaw, and it shouldn't
8 detract from the fact that what the nine have helped
9 accomplish here is extremely laudable, and we applaud them
10 for their efforts and what has resulted from those efforts.
11 And so, I think that's big picture number one.

12 Big picture number two, Your Honor, is the term
13 sheet is very clear about one thing. It says in its very
14 first numbered paragraph under the increased economic
15 consideration and accommodations -- incremental economic
16 consideration and accommodations, "Funds in the SOAF shall
17 be devoted exclusively to opioid-related abatement." That,
18 obviously, is a very important term. I think, again, all of
19 the parties in this case, it's very consistent with your
20 observations very early on in this matter that we didn't
21 want to have a re-do of the tobacco settlement situation,
22 where funds that were supposed to be used to help those
23 harmed instead were used for political vanity projects, et
24 cetera. And we have here this statement, and we would
25 assume and hope and for people to correct us if we're wrong,

1 that that statement means that the multiyear process of
2 negotiating and fine tuning, crafting the NOAT, which is
3 designed to provide abatement to the various jurisdictions
4 within it, which is all of them, would also be reflected in
5 the SOAF. Or, to put it another way, Your Honor, we
6 (indiscernible) the term sheet to suggest that the SOAF is
7 some kind of a political slush fund that would really be
8 used for abatement. We believe it's going to be used
9 essentially as a mirror of the NOAT, and if that isn't true,
10 I would hope we would hear from (indiscernible) that it
11 isn't true, that they're going to use the SOAF in some other
12 way.

13 But assuming that it's going to be used for
14 (indiscernible) which should be the abatement structure
15 agreed to and fine-tuned over years and many negotiations
16 and from some very fine mediators, you know, obviously, this
17 is just a (indiscernible) for everyone and there will be
18 some details that remain to be ironed out because this just
19 a term sheet -- Obviously, the SOAF doesn't yet exist and so
20 no doubt there will be (indiscernible) further down the pike
21 that I hope (indiscernible) together with a unity of purpose
22 (indiscernible). But in terms of what Your Honor is facing
23 here today and the approval of the term sheet, we believe it
24 represents a dramatic and positive step forward, and,
25 obviously, you know, the funds should be used for abatement

1 and we're confident that with the Court's assistance and
2 further negotiations, you know, we can ensure that they are
3 used in a way that they're used consistently with a NOAT
4 structure that was agreed to by all parties over the course
5 of many months.

6 Thank you, Your Honor. I reserve the rest of my
7 time for rebuttal.

8 THE COURT: Okay. I would just note that the
9 settlement term sheet states that funds in the SOAF shall be
10 "devoted exclusively to opioid related abatement including
11 support and services for survivors, victims, and their
12 families, and each member of the nine shall have the right
13 to direct allocation of the SOAF funds for such purposes."

14 So the overall use of the funds, I think, is clear
15 and, frankly, I think that is one aspect of the settlement
16 that I'm being asked to approve today in a way that is a
17 building block for a plan if a plan is found to be
18 confirmable here on appeal. And, obviously it reflects, I
19 think, the view of the settling states and the District of
20 Columbia that the funds should be and must be used in that
21 way under this agreement. I'm assuming that though the
22 details will be clarified that overall purpose is clear and
23 I think there would be, as always has been discussed in this
24 case to distinguish it from, for example, the tobacco
25 settlements, a provision in the confirmation order that

1 would, in essence, make that a binding aspect of the plan,
2 if again the plan were to be found to be confirmable by the
3 Circuit.

4 Okay. I think I've heard then from those who have
5 filed statements in support of the motion. I'm happy to
6 hear from the objectors. I would like to take just a very
7 short break, literally 30 seconds. I just left something in
8 the office that I want to have in front of me, so if you
9 could bear with me, Mr. Guard, I'll be back in under a
10 minute.

11 (Off the record)

12 Okay. This is Judge Drain. We're back on the
13 record. I think that was less than 30 seconds. So, again,
14 I'm happy to hear the objectors at this point, although I
15 will reiterate that I've read each of the objections, as
16 well. I know a number of them simply adopt one or the other
17 of the objections, in most cases the state of Florida's, and
18 I don't think every objector should feel the need to speak,
19 especially those that have adopted someone else's objection
20 here on record as having done so and I've read their
21 pleading.

22 So I think it makes sense for the state of Florida
23 to go first. It filed a substantive objection that has been
24 adopted by a number of other objectors, so you can go ahead,
25 sir.

1 MR. GUARD: May it please, Your Honor, John Guard,
2 Chief Deputy Attorney General, State of Florida.

3 Your Honor, I would start by first noting that Mr.
4 Huebner made a point of how the objections among this case
5 largely copied it and adopted a joinder that was filed by
6 Florida's counsel. I would note for the last two and a half
7 years, Mr. Huebner has not objected to Florida, Tennessee,
8 or Texas gathering the supporting states and getting them to
9 file things when they support the Debtor. Just now, it's
10 only that we object to something the Debtor's proposed that
11 he has a problem with that.

12 But moving on to the actual substantive arguments,
13 I think Mr. Huebner overblows the relief that this motion
14 gives. The appeal continues. The Court's confirmation
15 order is still vacated and there is a substantial risk if --
16 even this Court grants this motion that this Court's -- that
17 the district court's decision will be affirmed and this
18 Court's decision will remain vacated. This motion does
19 little to mitigate that risk. There's still a substantial
20 probability that the \$4 billion-plus that the plan provided
21 to Americans for abatement won't occur.

22 It is possible -- he also overblows the result of
23 you not granting this motion today. The reality is even if
24 the nine file their briefs, negotiation could continue.
25 This time instead of just being the Sacklers and the nine,

1 it could include the other states and the discussions and
2 negotiations include all, and maybe we could avoid having
3 almost half of America -- or half of the states -- objecting
4 to the result.

5 The same or similar relief could be obtained
6 against the Sacklers and the reality is until the Second
7 Circuit rules, there is still time -- and in fact, I believe
8 the Second Circuit is going to likely grant mediation. I
9 apologize, Your Honor. I'm --

10 THE COURT: Well, the Second Circuit grants
11 mediation on every appeal, but it's quite different than the
12 mediation that the parties in this case have gone through in
13 four different tranches. But, Mr. Guard, can I just -- it
14 seems to me that because so much of this settlement in terms
15 of the actual payments out is conditioned upon confirmation
16 of a plan that the issue raised -- the primary issue --
17 raised by the state of Florida and those joining in the
18 objection, which I have no problem with and I don't think
19 the Debtor did either -- the format that that was done in --
20 could go forward too by its own terms.

21 1123(a)(4) says that as a caveat to the
22 requirement that plan provide that same treatment for each
23 claim or interest of a particular class, "unless the holder
24 of a particular claim or interest agrees to less favorable
25 treatment of such particular claim or interest." So it

1 seems to me that the negotiations, if there is a prospect of
2 them, could continue because that objection still exists.
3 There wouldn't be a ruling on that objection before a plan
4 was before the Court -- that 1123(a)(4) objection -- and the
5 only consequence is that the parties would be negotiating
6 knowing that there is a sum that is anywhere from a billion
7 to a billion and a half greater than the sum that's in the
8 plan that's on appeal.

9 MR. GUARD: I think the problem with that, Your
10 Honor, is they're kind of asking you to prejudge that
11 objection and in the term sheet, I believe there is a
12 statement is (indiscernible) the side payment is reversed or
13 overruled in a court of competent jurisdiction, the payment
14 still gets made, and so I think there are consequences to
15 approval.

16 If the Court is going to withhold on that issue,
17 then --

18 THE COURT: Well, let's look at the settlement
19 agreement because I think this is -- or the term sheet.
20 This is an important point. So I think you're referring to
21 paragraph 11, right, on the -- in the term sheet on -- well,
22 the pages aren't numbered. I have a fax page so it's -- at
23 the top -- 32 of 38.

24 MR. GUARD: I believe so, Your Honor. I'm trying
25 to get to it.

1 THE COURT: All right. So it says, "If any
2 payments or consideration or amounts allocated to any of the
3 nine under the settlement proposal cannot be effectuated
4 because the approval order is reversed by a final order of a
5 court of competent jurisdiction, the Sackler family member
6 or trust shall pay such consideration" -- which is the SOAF
7 consideration, I believe -- "pursuant to one or more
8 alternative mechanisms."

9 Although later in the section it refers to
10 mechanisms which would be attached to the definitive
11 documents on or before the effective date of the plan. So I
12 think that could be read two ways, although, one could read
13 it to say that even if the approval order is reversed, this
14 payment is made, but again, it's a payment that's being made
15 by the Sackler family members and I just -- to me, that's --
16 frankly, if the Circuit did not reverse the district court's
17 confirmation order, I think everyone else would be free to
18 negotiate with the Sackler family members individually in
19 the chaos theory because at that point, I find it hard to
20 believe that I would continue the preliminary injunction.

21 So to me, it's -- I think what it's meant to do is
22 highlight that this is a payment by the Sackler members and
23 not the estate, but I don't see why, in all the most likely
24 scenarios, it would preclude negotiations.

25 MR. GUARD: Well, I think negotiations --

1 THE COURT: -- of a plan because I don't think --
2 because again, I think if the Circuit doesn't find a pathway
3 to confirm a plan with the release of third-party claims,
4 there won't be any negotiations except on a sort of dog-eat-
5 dog basis. The only plan negotiations would be where the
6 Circuit says, "yes, we agree that in Metromedia and Manville
7 and in the church cases and the partnership cases and about
8 ten other cases, we and the lower courts following us have
9 authorized third-party releases under appropriate scenarios.
10 This is one of them."

11 Then the plan goes back to me and you have your
12 confirmation argument, and you can negotiate. And maybe
13 I'll grant your objection and maybe I won't if you're not
14 able to meet your (indiscernible).

15 MR. GUARD: Well, Your Honor, likely, may be
16 retired by then. I don't --

17 THE COURT: Well, someone will. I'm sure there's
18 someone who could just as easily interpret the case law and
19 deal with the issue.

20 MR. GUARD: I think that -- our concern is that
21 the nine and the Debtors and everyone else is going to
22 indicate that by approving this today if that objection is,
23 you know, either been already decided and determined in a
24 way and therefore, you know, we're not going to be able to
25 make it or the negotiation as you've just referred to it is

1 going to be very different than a negotiation that could
2 occur now where you have not decided.

3 THE COURT: Well, I think the negotiation would be
4 different. There's no doubt about that, but that's a
5 consequence of life. I mean, I don't think that's an issue.
6 But I don't see how I could definitively rule on the
7 1123(a)(4) issue today in that I don't have a plan before
8 me. What I have before me is a term sheet that I need to
9 evaluate the reasonableness of, and if I felt that the
10 1123(a)(4) argument that you're making is, you know, likely
11 to prevail or strongly likely to prevail, I probably
12 wouldn't approve it, but that doesn't mean that I've decided
13 the issue. It's not a matter of collateral estoppel. It's
14 in the context of approving a settlement.

15 MR. GUARD: And to kind of go on, you mentioned --
16 I'll move on from it -- this argument, Your Honor. We just
17 have deep concerns about how this is going to, in the end,
18 play out and we think that they're asking kind of on the
19 front end for something that they can then later use on the
20 back end.

21 But we were talking about a minute ago or you
22 mentioned a minute ago that the money is not coming from the
23 estate and is the Sackler money. I would kind of point out
24 as I know Your Honor is well aware, more than -- I think
25 it's more than 80 percent of the money that is funding this

1 plan is Sackler money, and -- so there is no difference
2 between this \$277 million that is being paid on the side to
3 the nine versus the other \$4 billion-plus that is being paid
4 to all the states. It is all coming from the same sources,
5 and so while I appreciate the argument and the effort to try
6 to subvert and get around the prohibition and pay a premium
7 to these states, we have grave concerns that not only is
8 this going to make future deals in -- outside of this
9 bankruptcy -- more difficult, but it invites a certain level
10 of abuse inside the bankruptcy process where affiliates or
11 others associated with debtors could strike side deals to
12 either discourage appeals or to obtain confirmation, and,
13 obviously, that's not what the Bankruptcy Code is meant to
14 do.

15 It's not what 1123(a)(4) was meant to stop, and so
16 that -- we would ask for that reason to reject the Debtor's
17 argument about the money is not coming from the estate,
18 it's coming from the Sacklers. We think that distinction is
19 unavailing given the fact since day one this bankruptcy is
20 going to have been funded by the Sacklers or largely by the
21 Sacklers.

22 THE COURT: Well, but the Sacklers' assets aren't
23 the estate assets. They're the Sacklers' assets.

24 MR. GUARD: I get that, Your Honor. But in order
25 to get these releases, they pledged their assets and, you

1 know, on multiple occasions indicated that they had -- that
2 they were not going to pay more and so -- and on multiple
3 occasion we stopped. On multiple occasions they increased
4 it trying to get more states on board, and now they're
5 paying a side deal to the last nine.

6 THE COURT: Well, except -- look. There are two
7 sets of claims against the "Sacklers." I'm using the term
8 broadly. It includes the trusts and the other companies
9 that the Sacklers have covered in the -- as released
10 parties. The first, as we all know, are the estate's
11 claims, which are essentially fraudulent transfer claims
12 although there are also veil piercing and the like estate
13 claims. And then the second, very importantly, are third
14 party claims which are being settled in the plan as well.

15 And I think the response to your point is
16 particularly two-fold. The first is, like the Debtors, like
17 the creditors committee, I fully understand why your state
18 and the other objecting states are angry that the allocation
19 formula so carefully negotiated in this case, essentially in
20 the mediation or finished in the mediation with Mr. Feinberg
21 and Judge Layn -- Layn Phillips, excuse me -- isn't being
22 followed here in this settlement, but I think that is just
23 an expression of frustration. I don't think that's a legal
24 principle, and certainly in the subsequent negotiation that
25 you have over an allocation anything when there's a national

1 issue, I don't see any reason why you can't take it out on
2 these nine states. You know, that's a separate deal, that's
3 a separate issue in the future.

4 So I'm really just focusing on this case, and as
5 far as this case is concerned, except for these nine states
6 and the District of Columbia, I don't have objections to the
7 release of the third-party claims; and the settlement of the
8 estate's claims is done. There was no objection to that,
9 and, in fact, one could argue that some recent case law
10 highlights that there really wouldn't be more money put on
11 the table for that settlement, arguably, which deals
12 specifically with -- and denies -- an argument that tax
13 payments in a pass-through entity could be fraudulent
14 transfers. That's In re F-Squared Investment Management,
15 633 B.R.663 (Bankr. D Del. 2022).

16 So I think what we're talking about here is pretty
17 close if not the same as the hypothetical that Mr. Huebner
18 spun out, which is that to get a consensual release, just
19 like there've been no objections by the other states to the
20 release as per the \$4.5 billion deal, the Sacklers could
21 have gone out and gotten that consensual release separately
22 and they're not doing it through the plan. They are
23 amending the settlement agreement. I understand that issue.
24 But to me, that goes to 1123(a)(4) and the dynamics there,
25 and it's hard for me to believe that that issue, as far as

1 the intercreditor enforcement rights are concerned, won't
2 get resolved in the drafting.

3 I'm having a hard time seeing how, as disagreeable
4 as it is in terms of allocation, it's improper, because I
5 think it is not estate property. It's not hidden estate
6 property. It's not an opportunity that the estate had that
7 is being settled, you know, under the table. It's different
8 than Jevic. It's different than DBSD. You know, it -- each
9 of those cases involved property of the estate. Jevic
10 involved a settlement of a fraudulent transfer lawsuit.
11 That's been settled here. That money was already paid under
12 the old plan. So I think, while I told you that I would
13 have and that my successor would have an open mind when the
14 confirmation hearing came up under 1123(a)(4), as a
15 settlement -- and the courts have said even with settlements
16 -- even though 1123(a)(4) and confirmation provisions don't
17 apply when you're considering a settlement -- I certainly do
18 want to consider fundamental premises of the Bankruptcy Code
19 which include the general proposition of equality of
20 treatment -- the money's not coming from the estate.

21 MR. GUARD: Your Honor, first, we're not mad. I
22 want to be clear about that. We are disappointed.

23 THE COURT: Well, I would be mad. I mean, you can
24 say disappointed. I don't -- I would be mad if I spent
25 months negotiating something and then it's different, but

1 you're more diplomatic than I am or maybe less volatile. So
2 "disappointed" is fine.

3 MR. GUARD: Well, I mean, Your Honor, the reason
4 why -- or part of the reason why we're objecting, other than
5 the bankruptcy grounds is, the states collectively and
6 collaboratively have now settled opioid actions for over \$27
7 billion and this settlement -- this -- \$1 billion most of
8 which is paid between years 10 through 18 imperils and
9 impairs the ability of any future settlement which they're -
10 - I mean, Purdue is just one of many.

11 I know that is not a bankruptcy consideration, but
12 it is a very much a consideration, and you know, this is
13 money that is much needed. It is money that is going to
14 save lives and if these other settlements are delayed or not
15 happen, you know, that is a concern. That is a policy
16 concern. Again, I know it's not a bankruptcy concern. And
17 so that is part of the reason why you've gotten the level of
18 objection that you've gotten here.

19 I mean, again -- I guess if what Your Honor is
20 saying is that there's going to have to be another plan and
21 there's going to be a resolicitation and there's going to
22 the --

23 THE COURT: I'm not sure there would be a
24 resolicitation, and I haven't said that. But there does
25 have to be, I think, at least an amendment to the plan to

1 reflect the increased payment to the NOAT. So there will be
2 another plan, but the case law is, I think, quite clear that
3 you don't need to resolicit where there are improvements.

4 MR. GUARD: But if they're -- well, depending, I
5 guess, on how -- because we do not know how -- we have a
6 term sheet here and I know you've talked about the
7 intercreditor agreements, and there's basically a security
8 issue with the pari-passu. I mean, there -- well, I guess
9 what I would say -- (indiscernible) what I would say is,
10 right now, the nine are in the exact same situation as the
11 other 41. The plan has been vacated so we still have --
12 unless there is a reversal -- our individual claim and, you
13 know, I guess it is possible or conceivable that the 20
14 states that are objecting could, you know, decide to file
15 amicus briefs in the Second Circuit advocating for the
16 opposite position. I guess that is possible. I don't think
17 it's likely.

18 THE COURT: I don't think that's likely either. I
19 mean, honestly, if the Second Circuit reverses, what would
20 you rather have, a plan that has a maximum of 4.5 billion or
21 a plan that adds another 898 million to 1.398 billion to it?

22 MR. GUARD: Well, I guess --

23 THE COURT: It doesn't matter, right, so you
24 wouldn't want to argue against the appeal.

25 MR. GUARD: Well, Your Honor, I guess my point is

1 that we're -- I guess part of the Debtor's argument is that
2 we are somehow differently situated than the nine and Your
3 Honor kind of made that point too, and the reality is right
4 now, sitting here, we are not because the plan has been
5 vacated, and you know, barring certain things happening, we
6 are -- you know, very well could end up in -- having to
7 propose a completely different plan and -- with a different
8 kind of release in a different situation. And, obviously,
9 I'm not asking you to rule in advance on whether the
10 modification requires (indiscernible) or resoliciting but,
11 you know, I'll hold those argument until we see how things
12 shake out.

13 But I think that from our point of view and the
14 Debtor's conceded this, he is actually seeking some
15 modifications here and this Court does not have jurisdiction
16 because that order is under appeal. And I don't think you
17 can parse that issue and say, well, it's not the particular
18 provision in that order that is actually up on appeal. The
19 whole order has at this point in time been vacated --

20 THE COURT: No, but I don't --

21 MR. GUARD: -- not just one --

22 THE COURT: I don't think the Debtor has stated
23 what you've said and I don't think the motion seeks any
24 change to a plan. There's no plan before me. What the
25 motion seeks to approve is the settlement term sheet which

1 has, I think, four items in it that are to go into effect
2 upon such approval, and the rest of it is conditioned upon,
3 first, the grant of the appeals that are before the Court --
4 of the appeal before the Court -- and then the confirmation
5 of a plan that includes the additional funding for the NOAT.
6 There's no amendment to the plan that's before me today.

7 MR. GUARD: But the term sheet implies that --
8 well, I understand it may be conditional, but it is -- I
9 mean, on proposed order of paragraph 3, authorized the
10 Debtor to revise the shareholders' settlement agreement
11 which of course has been made a part of and is integral to
12 the plan at section 12.6 of it.

13 THE COURT: But that's revised from the draft
14 (indiscernible), to prepare it. It can't go into effect
15 until the -- a plan's confirmed. It's just like the
16 authorization that I gave to do the preliminary work on the
17 trust.

18 MR. GUARD: But this Court's order today will
19 likely foreclose arguments against those changes or
20 arguments -- so that is our fear and that is why we --

21 THE COURT: No, I know that's your fear, but I
22 think I've alleviated it other than by saying that I think,
23 ultimately, although this is just in terms of my evaluation
24 of whether the settlement is worth pursuing or alternatively
25 is, you know, colloquially a pig in a poke, the Debtor has a

1 better argument under 1123(a)(4); but that's not to decide
2 the issue.

3 MR. GUARD: Yes, Your Honor. And quickly on fees
4 and then I'll conclude my arguments. On fees, our argument
5 is simply under the Bethlehem Steel case since the nine --
6 the difference between the MSGE or the AAC orders that you
7 have entered pursuant to 363(b) where those committees were
8 working for the benefit of all, here you have a committee or
9 a group of people working that have benefited themselves,
10 and under the principles of Bethlehem Steel, that we think
11 that makes 363(b) unavailable, and I'll end the argument
12 there.

13 THE COURT: 898 million to 1.398 billion seems to
14 be a pretty big benefit for all.

15 MR. GUARD: And \$277 million in -- Your Honor --

16 THE COURT: I understand, but I think one is -- we
17 can all agree one's about 75 percent greater than the other.
18 Look, I mean, I -- to me, the going forward work is quite
19 equivalent, I think, to the basis for approving the work in
20 Bethlehem Steel, and, frankly, approving the work to the AHG
21 and the 15 non-consenting states, et cetera. It's to-do
22 work that will enable a plan to go effective promptly and to
23 negotiate the relatively minor open points like the
24 intercreditor point on the collateral pending the appeal.
25 As far as the latter work, I appreciate it's being sought

1 under 363 but to me, this is -- this really does fit into, I
2 believe, the 503(b) case law, including the McLean
3 Industries case and the Granite Partners case. McLean
4 Industries is 888 B.R. 36 38-39 (Bankr. S.D.N.Y. 1988). The
5 courts have always recognized a couple of different grounds.
6 One is fostering and enhancing the progress of
7 reorganization, of successful confirmation of the plan
8 rather than being a pest and retarding it. That means, you
9 know, working as a group to negotiate key terms and key
10 documents.

11 The other is literally enhancing the estate which
12 was McLean Industries, and yes, when you enhance the estate,
13 there is some value that spills over to you and when you
14 enhance the estate in a way that leaves you with more value
15 than others from the estate, you may run into a different
16 issue as far as the unequal treatment doctrine. But we're
17 talking about the estate of course, and the estate's being
18 enhanced here by a lot of money. So I'm really not that
19 troubled by the payment of the fees.

20 MR. GUARD: Well, they had moving on a --

21 THE COURT: Put it differently. Two and a half
22 million for 898 to 1.398 billion is a pretty good trade.

23 MR. GUARD: Your Honor, if there were -- under
24 503(b) and the fees were being limited to just what time was
25 spent during the mediation, that would be one thing, but I

1 think the time period goes back further. And I understand
2 the relative size difference point that you're making, but
3 they did not argue for it under 503(b). And --

4 THE COURT: Well, I understand, but I'm
5 comfortable with it because I think it would fit under
6 503(b), subject of course to what's in the term sheet, which
7 is the level of review as to reasonableness that the AHG and
8 others have. The -- clearly, the leverage here to get this
9 agreement from the Sacklers came from the work that they did
10 in objecting to the plan and appealing. That's where they
11 got the leverage. Just like your group got its leverage by
12 fighting so hard in the MDL and negotiating.

13 MR. GUARD: Your Honor, I guess I will conclude by
14 saying, you know, after spending two and half years trying
15 to act in the best interest of all states and, frankly, all
16 creditors, you know, it is a shame that a relative few have
17 chosen to do something that I think is going to cause
18 massive harm inside and outside this case. And, you know,
19 with that, Your Honor, we rest on our papers.

20 THE COURT: Okay. Again, I understand the
21 frustration and there may be harm outside of the case,
22 although that's something I really can't comment on, but
23 inside the case, I just -- I'm looking at the numbers and
24 I'm looking where the money's coming from and I don't see
25 it.

1 MR. HUEBNER: Your Honor, not to respond to Mr.
2 Guard, which I will do later when everyone is done, but I
3 have something that is I guess a concession, because I think
4 there's been some confusion but I think may make many
5 objectors lives here and today shorter about some of your
6 (indiscernible) with Mr. Guard. And so --

7 THE COURT: Okay.

8 MR. HUEBNER: -- I thought it might be helpful to
9 do that. Your Honor, you had it exactly right and I want to
10 be clear and this actually really -- I hope will others as
11 well. This is not an 1127 motion. That would actually not
12 be okay right now, because our plan is on appeal and you
13 have no authority to amend it. Your view of what that
14 paragraph of what our proposed order does is exactly right.
15 It's mechanistic.

16 And if this order is entered today and if, as we
17 hope and expect given the 83 decisions lined up on one side,
18 the Second Circuit reverses Judge McMahon and we are clear
19 for take-off, we will make an 1127 motion at that time to
20 make the extremely minor and unbelievably favorable plan
21 amendments that are reflected in this term sheet, to swap
22 out the foundation promise for cold hard cash on day one, to
23 amend -- get authority to amend the settlement agreement
24 which is an attachment and incorporated to allow for an
25 extra 900 to \$1.4 billion adding that schedule and to deal

1 with the collateral issues -- that is not up today. And I
2 think that's why we found the jurisdictional arguments so
3 puzzling. So let there be no doubt to any objector,
4 including Mr. Guard whose efforts I think I extolled at some
5 length in my opening remarks as part of the group that got
6 us a long way to where we are -- that's not today's relief
7 being sought.

8 Today's relief being sought is extremely modest,
9 the way Your Honor believed it to be with the 1127(b)
10 hearing and obviously, we'll talk about -- we think the Code
11 and the Rules and the cases are very clear on their face,
12 that we will not remotely need resolicitation. I would
13 imagine and I hope at that time that nobody will object to
14 something whose benefits (indiscernible) outweigh by a
15 factor a 100 (indiscernible) but today is not that day.

16 So hopefully, that concession about what the Court
17 is not being asked to do -- and I think a lot people
18 probably saw the absence of 1127 anywhere in our -- this
19 order had read it exactly the way the Court did. I do hope
20 that gives people comfort, that that issue will be back only
21 when there is jurisdiction for it to be back.

22 THE COURT: Okay. Well, that's right. It's not a
23 concession. I think it was implicit in the relief that was
24 sought from the beginning, but I appreciate the reiteration
25 of it.

1 MR. HUEBNER: Yes, Your Honor. You're right.

2 It's a clarification. That's a much better word than the
3 one I chose.

4 THE COURT: Okay. All right. So I see a couple
5 people on the screen. I don't know -- before I hear from
6 the AHG which also filed a -- not a joinder but its own
7 limited objection -- again, I have noted all of the joinders
8 and you should feel free to speak, but again, I've noted the
9 joinders and you can also just rest on those. So I don't
10 know who wants to go next.

11 MR. CAHN: Your Honor, this is Aaron Cahn. May I
12 be heard?

13 THE COURT: Sure.

14 MR. CAHN: For the State of West Virginia. Can
15 you hear me clearly, Judge?

16 THE COURT: Yes, I can.

17 MR. CAHN: Good. Thank you. This is Aaron Cahn
18 of Carter Ledyard & Milburn for Patrick Morrissey, Attorney
19 General for the State of West Virginia.

20 Judge, I want to say very briefly and I don't want
21 to indulge in any of the precatory language if I may call it
22 that about frustration and disappointment, whether or not
23 the objecting states should be grateful for the increase
24 that we did get and shut up about the rest of it. I don't
25 want to talk about any of that.

1 I want to address the issue where the money's
2 coming from. And you, Your Honor, and Mr. Guard discussed
3 this briefly during Mr. Guard's presentation and I just want
4 to pick up the trail from there and say that in point of
5 fact and obviously despite the settlement that was entered
6 into since everything is now open season again, there are
7 potentially active fraudulent transfer claims that are
8 maintainable against the Sackler family, and, please, Your
9 Honor, please indulge me since we only received Debtor's
10 legal argument two hours before the start of this hearing.
11 I haven't had time to put anything in writing or perhaps
12 make a more polished argument than I would have like to
13 make.

14 So if Your Honor will bear with me, I only want to
15 say that it's not at all clear to me -- I don't think it's
16 clear to a lot of other people -- that we're not actually
17 disposing of estate assets when the nine plus one takes
18 close to \$300 million of Sackler money. It's clear --
19 again, without doing the deep dive into the merits of the
20 fraudulent transfer claims, it just seems on the surface
21 with claims in this bankruptcy case exceeding -- well, we
22 know they're in the trillions, right, because the states' --
23 the 50 states proofs of claim alone was in excess of \$2
24 trillion and I am sure that the personal injury claimants
25 and the other claims of the other 618,000 creditors would

1 dwarf that \$2 trillion number. And this was accomplished
2 over a large number of years with -- and many of the states,
3 including West Virginia, having been in litigation with
4 Purdue for probably 15 to 20 years prior to the start of
5 this bankruptcy case.

6 So fraudulent transfers of corporate profits which
7 very likely -- again, without doing a lot of -- without
8 having the ability to do a lot more research than we've had
9 the opportunity to do since the bulk of the money -- maybe
10 all of it -- is -- represents corporate distributions or the
11 proceeds of those distributions to investments and whatever.
12 On the surface, there would seem to be a very compelling
13 case that there are -- all the money that the Sacklers have
14 or whatever hasn't been paid in taxes is recoverable as a
15 fraudulent transfer.

16 Now, again, we're not here to litigate the merits.
17 We can't litigate the merits of that claim, but I want to
18 speak on this point to say that the assumption that this is
19 just Sackler money, had no relationship to the estate and
20 therefore the Sacklers can do what they want with it -- I
21 don't think that's a correct assumption, and I think that
22 ought to be seriously taken in account before we approve the
23 settlement. This is not -- I'm not talking disappointments.
24 I'm not talking about how angry or disappointed -- whichever
25 word you'd like to use -- the various objecting states and

1 probably a lot of states that haven't objected. Sorry, Mr.
2 Preis, I don't think anybody's silence, you know, should be
3 taken as indicative of any position.

4 So this is -- I think this is a real issue, and I
5 don't think we can assume that this is just -- this is not a
6 (indiscernible), right. This is not an unrelated investor
7 coming in to purchase a position. This is not like it was
8 in the ICL and some of the other cases that Mr. Huebner
9 cited in his brief. This is not a secured creditor making a
10 bid and throwing a few dollars to the unsecured creditors in
11 order to smooth the way to plan confirmation. This is not
12 that.

13 This is a genuine problem where potentially
14 recoverable estate assets are being diverted solely to the
15 use of a small group of state creditors. And whether it be
16 used for opioid abatement or not -- and by the way, I don't
17 think anybody disputes that. I don't think it was necessary
18 for any of the previous speakers to say that. We've all
19 been operating on the assumption that all this money is
20 going to be used for abatement or other relevant purposes.
21 Everybody has been working towards that goal for the past
22 two and a half years and in fact long before then.

23 But that's not the point. The point is, it needs
24 to be -- this needs to be taken into account for a state
25 like West Virginia -- and I hate to say this, Judge. I

1 really do but the fact of the matter is, we've all
2 acknowledged, West Virginia is unfortunately the face of the
3 opioid crisis with due deference given to all the other
4 states who've also been massively affected. But West
5 Virginia's sole focus during this entire case has been the
6 allocation issue. We didn't object to the releases of the
7 Sacklers. Our "no" vote on the plan was based solely on
8 dispute with the (indiscernible) state allocation which as
9 you, Your Honor, knows very well was more population
10 centered that it -- than it probably ought to have been.

11 So West Virginia has scratched and clawed for
12 literally every dime to try to increase its ability to deal
13 with the very large segment of its own population that's
14 adversely affected by the opioid crisis. So to see this
15 grab -- the cash grab. It's a cash grab. I mean, if we're
16 going to attribute silence -- give legal effect to silence -
17 - I have to note that none of the nine have appeared on this
18 motion. None of them have filed any papers in support and
19 none of them have explained what considerations drew them to
20 create this special fund. And again, if we're using Mr.
21 Preis's interpretation of evidentiary rules, we could
22 perhaps attribute that there was no reason other than the
23 desire to glom some additional money when they had the
24 chance.

25 So with all of that, Your Honor, and I apologize

1 for going off on a rant. I actually hadn't meant to do
2 that. But the fact of the matter is that that there's a
3 severe, in my opinion -- in our opinion -- a severe legal
4 objection to Mr. Huebner has made the -- everybody provide -
5 - there's a legal objection to the settlement and that is
6 these are -- at least potentially -- estate assets that are
7 going to (indiscernible).

8 THE COURT: Okay. But the key word here --

9 MR. CAHN: Thank you, Your Honor, for your
10 indulgence.

11 THE COURT: The key word there, Mr. Cahn, is
12 "potentially," and I'm not deciding that issue today. All
13 I'm deciding is whether I should approve a settlement that
14 enables that issue to be raised in the context of another
15 billion to a billion and a half going into the estate and
16 the 277 million into opioid abatement. This isn't -- as we
17 just heard, and I'm not going to say it again -- a
18 confirmation hearing. And ultimately, when people look at
19 this more carefully, I guess they could come up with a
20 rationale as to why the 277 million is estate property. I
21 think others will probably say, well, but what we're back
22 here on is a plan whose confirmation was affirmed, right,
23 and that plan provided for 4.5 million and this is just
24 better. And the people who settled their claims and the
25 estate that settled its claim is -- really don't have a

1 basis to say we want more because they settled their third-
2 party claims in the \$4.5 billion plan and the estate settled
3 its claims in the \$4.5 billion plan. So the issue is -- I
4 appreciate it -- is -- it takes some thought, but I could
5 certainly see the rationale that the Debtors have given
6 which is that this isn't really estate property because the
7 fraudulent transfer suit was already settled.

8 But again, it's not an issue --

9 MR. CAHN: Thank you for the indulgence.

10 THE COURT: -- it's not an issue for today. The
11 issue for today, should I approve this agreement which has
12 three or four, depending on how you look at them, elements
13 to be implemented now and the rest to be implemented either
14 -- well, depending on the how Second Circuit rules -- either
15 if the Second Circuit affirms the district court's opinion
16 in which case there's going to be complete chaos and West
17 Virginia can fight for whatever it wants along with
18 everybody else, or the Circuit upholds the \$4.5 billion plan
19 except now it's a \$6 billion plan, and confirmation issues
20 will be decided at that point.

21 MR. CAHN: We're not interested in creating chaos,
22 Your Honor.

23 THE COURT: I appreciate that. Your client came
24 across to me as a very dedicated public servant. I get
25 that, really. So anyway, I'm just responding -- I've

1 thought about this point. I actually was thinking about it
2 before the briefing because I had to assume from reading
3 between the lines in the mediator's reports that there was
4 perhaps something like this issue going to raise its head,
5 which it did. So I understand your arguments. I think
6 they're arguments for another day, not for today.

7 MR. CAHN: Thank you very much, Your Honor.

8 THE COURT: Okay. So -- now the state of West
9 Virginia did file a separate objection as did the AHC but --
10 so Mr. Eckstein, I don't know if you want to go next or --

11 MR. ECKSTEIN: Your Honor, good afternoon. I'm
12 happy to let any other states that want to make any
13 remaining comments do so and then I'll just try to wrap up.

14 THE COURT: Okay. That's fine.

15 MR. ECKSTEIN: Just didn't want to lose the
16 opportunity.

17 THE COURT: So do any of the joining states want
18 to add to the remarks by Mr. Guard and Mr. Cahn? Okay. I
19 guess not.

20 MR. ECKSTEIN: Your Honor, in that case, thank
21 you. Kenneth Eckstein, Kramer Levin, co-counsel for the ad
22 hoc committee of government complainants and I appreciate
23 the opportunity to make a few remarks.

24 I'm sure Your Honor appreciates from reading the
25 motion and reading the pleadings that this is in fact one of

1 several very, very difficult issues that have come up in
2 this case and it's interesting that we continue to have
3 these complexities and challenges that come up even post-
4 confirmation while we're in the midst of an appeal.

5 THE COURT: And I do appreciate that issue, Mr.
6 Eckstein, and I think because of the difficulty of it, what
7 the parties are focused on is roughly a 20 to 25 percent
8 variation as opposed to a 70 to 75 percent variation or
9 more. I have to believe -- I have no reason to know, but I
10 have to believe that these same points which make the
11 rather, I think, simple proposal by the Sacklers much more
12 difficult, not because of the Sacklers, but because of the
13 allocation issue. And I think that's reflected in the
14 relative percentage of the SOAF versus the rest.

15 MR. ECKSTEIN: I think that's correct.

16 Your Honor, before making several substantive
17 observations, I do want to take a moment to, number one,
18 acknowledge on behalf of the ad hoc committee what we know
19 as the prodigious efforts and commitment that Judge Chapman
20 provided to this case. We know firsthand that the amount of
21 time and effort and energy that had to go into throwing
22 herself into the midst of a case of this complexity and
23 challenge does not go unnoticed, and we have great respect
24 for her efforts and dedication.

25 And the same is true for the Court and

1 (indiscernible) parties that I know worked very hard, and I
2 know Your Honor appreciates that the ad hoc committee is one
3 of several entities that has devoted its efforts as Mr.
4 Huebner says, I think day and night for two and a half years
5 to make a successful plan in this case. And I believe as
6 the Court appreciates, the ad hoc committee has participated
7 actively before Judge McMahon and has filed a
8 (indiscernible) briefs in front of Second Circuit
9 (indiscernible) an effort to try to make sure that this case
10 ultimately is successful.

11 Your Honor also knows the ad hoc committee was
12 instrumental in developing and implementing the various
13 intercreditor settlements that Your Honor, in connection
14 with confirmation, appropriately recognized (indiscernible)
15 part of the building blocks of this plan. And I know Your
16 Honor appreciates that Mr. Guard was a critical witness at
17 confirmation and testified in support of the allocation and
18 other settlements that were embodied in the plan and were
19 important elements of the plan, and as Your Honor
20 recognized, without which, this plan could not have been as
21 successful as it was, notwithstanding the hopefully
22 temporary setback that we've suffered along the way in
23 connection with the third-party release.

24 So the reaction that Your Honor has seen to the
25 opposition in this amendment should not come as a surprise.

1 There were certain principles that guided how parties
2 approached this case. As Mr. Guard indicated, great care
3 was given at every step of the way to try to enhance this
4 estate as effectively as possible. Many, many parties had a
5 hand in that, but one of the hallmarks of the plan -- all of
6 the building blocks -- was that the plan was proposed,
7 number one, with an eye for devoting all of the funds to
8 abatement, which makes this plan unique; and number two, was
9 done in a manner that provided the maximum amount of
10 equality and openness and consensus as possible and that is
11 why notwithstanding the controversy surrounding the third-
12 party release issue, there was such overwhelming consensus
13 ultimately for the extraordinarily complex plan, and it did
14 not go without a lot of effort.

15 But that was a major achievement, and
16 unfortunately, what we're being confronted is a significant
17 impairment of one of the building blocks of this plan and
18 this important to this case. That is important to the
19 integrity of the way a bankruptcy case proceeds. The fact
20 of the matter is, this is post-confirmation while an appeal
21 was pending, but had this proposal come to the Court in
22 connection with the confirmation hearing, I'd be hard
23 pressed to think that the Court would seriously be able to
24 even entertain this kind of relief. And the fact that it's
25 coming up now one might (indiscernible) to suggest the facts

1 are different but the reality is, the impact on creditors
2 and the impact on the (indiscernible) is not that different.

3 Mr. Huebner made, I thought, an interesting
4 observation trying to crystalize why this is not really a
5 big deal. He said had the Sacklers gone out and simply
6 agreed with the nine to have paid them \$277 million in
7 consideration for them not pursuing their appeal, they could
8 do so, but I think we all know -- Mr. Huebner knows as well
9 -- that they couldn't have (indiscernible) in this case.
10 This case was premised upon a preliminary injunction that
11 has been in place for two and a half years. It's premised
12 upon an agreement that the Sacklers made with the creditors
13 committee and the Debtor and ultimately approved that they
14 wouldn't divert assets, that they wouldn't go out and pay
15 creditors away from the plan and away from the case.

16 And we all know that 80, 85, 90 percent of the
17 assets that are going to be distributed to creditors through
18 this plan are coming from the Sackler distributions, and so
19 to suggest that somehow the Sacklers are paying \$277 million
20 away from this plan is -- frankly, I find it disingenuous.
21 But -- I heard the argument but I can't go without a
22 response that this case is about Sackler payments, and we
23 all understand and what makes this difficult is, there is no
24 question the benefits of this settlement are massive.

25 Of course, we all want \$1 billion extra from the

1 Sacklers. It makes a previously outstanding plan that much
2 better and everybody understands that including in the ad
3 hoc committee and that's what makes this so difficult
4 because we're faced with really a Hobson's choice. There's
5 no good answer. Nobody wants to lose the benefits of the
6 settlement. I understand that, Mr. Guard understands.
7 Everybody on the ad hoc committee understands that, but
8 there was a right way to do this. That is the way the NCSG
9 negotiated these modifications was a model.

10 They negotiated improvements to this plan. They
11 were material. They were done in advance of confirmation,
12 that it did not involve separate payments. There are ways.
13 There are ways to have accomplished to recognition
14 confirmation. Your Honor, the ad hoc committee did not to
15 Mr. Huebner. We were concerned that the term sheet when we
16 read it indicated sort of an open-endedness and in the
17 motion, the Debtor clarified that the fees only applied to
18 outside counsel. The ad hoc committee had no objection to
19 that. I understand before the motion was -- before the
20 motion maybe was read carefully, initial objections got
21 filed that included that point and I understand Your Honor's
22 comments and I can understand the discretion of it, but
23 that's not what this objection (indiscernible).

24 And there are ways in the Bankruptcy Code to
25 provide for essentially compensation or recognition for a

1 contribution that was made by creditors to a case. This is
2 not such a motion. This is not asking for substantial
3 contribution or such other recognition, all of which would
4 have probably not been controversial.

5 This is an attempt to essentially after the fact
6 fundamentally change the way in which creditors are being
7 treated under this plan and that is why Your Honor saw such
8 broad-based objections and ultimately, we believe it is
9 crucial that it be brought to the Court's attention as to
10 where these objections stem. And I sympathize with the
11 challenge of this motion and the objections because they're
12 not easy and they raise difficult problems because as I
13 said, we recognize the fact that, at the end of the day,
14 this should be an -- this should have been an easy situation
15 that would have been applauded.

16 The nine states negotiated an enhancement. The
17 enhancement runs through the plan. It runs through NOAT.
18 All parties would have done better. The Sacklers would have
19 made a greater contribution, which was something that both
20 this court and Judge McMahon encouraged. It would
21 facilitate greater certainty at the circuit court level and
22 I believe it would have been the -- an appropriate way to
23 have capped off what hopefully will be the success of this
24 case.

25 This is an unfortunate sort of chink in the armor

1 of where this case has developed and it unfortunately has
2 provoked this kind of an issue that does go to the heart of
3 the way a bankruptcy case proceeds as well as the broader
4 issue that Mr. Guard raised about how settlements,
5 particularly class action settlements that require
6 predictability and stability of rules, how they're going get
7 handled. It's unfortunately the case this kind of action
8 rewards that kind of -- essentially, rewards poor behavior
9 of grabbing for oneself, and it makes it difficult for
10 parties to reach settlements.

11 Now Your Honor, I believe in the colloquy with Mr.
12 Guard I thought had suggested -- at least it would seem to
13 me potentially to be a path forward, and that is that this
14 is not an amended plan and I agree with Mr. Huebner. This
15 is not an 1127 motion. And the 1123(a)(4), I would agree,
16 can properly be addressed when the plan is amended and it
17 doesn't have to be addressed today. And I think that that
18 may be the appropriate way to handle this, which is, to
19 ensure that the payments are going to be available and to
20 the extent it ultimately is determined that 1123(a)(4) is at
21 odds with diverting 25 percent of this sort of enhanced
22 payment away from the estate, that the Court can deal with
23 it at the appropriate time.

24 And I'm comfortable seeing that as the path
25 forward. I share Mr. Guard's concern that we don't want to

1 be inconsistent about it, but that could well be a
2 possibility where we can move ahead with, hopefully, a
3 largely consensual appeal. The estate will be enhanced and
4 we can determine at a subsequent stage, assuming the Second
5 Circuit reverses and we're in the position for this plan to
6 go effective to deal with an amendment at that time -- I
7 would agree with Your Honor it doesn't necessarily require
8 resolicitation. We can address that issue at the time as
9 well.

10 But I think the Court can consider the question
11 and doesn't have to make those kinds of rulings today. But
12 I do think it's important to not be -- I don't want to be
13 disingenuous about essentially what that relief would mean.
14 It would be two steps. I happen to think that two steps is
15 appropriate, and I think that it would provide the best
16 outcome for everybody. It would allow for the appeal to
17 proceed the way we all hoped it would proceed. It would
18 allow for the value to come into the estate and it would
19 allow the nine to essentially try to be credited for the
20 value that they're actually contributing and we could
21 consider it in the context of the amended plan.

22 The only other two things we raised, Your Honor,
23 in our objection, both of which we tried to indicate we
24 thought were easily resolvable -- one was, to the extent any
25 monies are going into a SOAF, we believe that the SOAF

1 should, in addition to saying the monies are going to be
2 used for abatement, they should be agreeing that those
3 monies are going to be applied consistent with the
4 procedures that were carefully put in place by all of the
5 states and all of the local governments for abatement.
6 There was a very careful procedure. Each of the nine states
7 participated in that process, and nobody objected to it.
8 And it would be surprising to me if there was any
9 disagreement about that, but that is not the term sheet was
10 written and so we would ask for clarification of that. And
11 at least as of today, we haven't gotten firm clarification,
12 although, I know that in discussions prior to today's
13 hearing there seemed to be growing consensus around this
14 issue, and we think that issue could be clarified and should
15 not be all that controversial.

16 The third issue --

17 THE COURT: Can I just interrupt you? I mean, to
18 me, that's one of the reasons why the payment of the legal
19 fees is appropriate so that people can talk about those very
20 important issues and try to resolve the documentation of
21 them. But go ahead.

22 MR. ECKSTEIN: But I would ask, Your Honor, that
23 in connection with today's hearing, there should be
24 clarification that, to the extent there are any monies that
25 are going into a separate fund that's going to be created

1 through this case, that those monies should also be
2 distributed consistent with the allocation and distribution
3 procedures that were built into and made part of the plan of
4 reorganization which was something that all states endorsed
5 and all the governments endorsed and we shouldn't be
6 creating more damage, it seems to me, to a structure that
7 was already put in place.

8 THE COURT: Well, let me say this. That structure
9 was approved by me with ample evidence from very credible
10 witnesses, and there's a great benefit to that work already
11 having been done. So I can understand, not only your
12 position on that, but also Mr. Macclay's position on behalf
13 of the MSGE group.

14 MR. ECKSTEIN: Your Honor, the last issue that we
15 had raised, which again, I know has gotten some discussion
16 and again, I -- I think we suggested in our papers, we
17 thought it would be a relatively easy issue to resolve
18 really went to the terms of the settlement agreement, in
19 particular as to the sharing of collateral. I think as Your
20 Honor knows, a lot of work went into negotiating with the
21 Sacklers for collateral that would be posted to secure
22 payments that were going to be made over ten years.

23 At the time, we only really had sort of two
24 parties who were looking to receive distributions under the
25 plan. The MDT was going to essentially be the party that

1 was supposed to be responsible for collecting the payments.
2 They were going to then make payments to the private trusts
3 and they were going to then make payments to the NOAT and
4 payments were also going to the PIs, and that was all laid
5 out very carefully and everybody had amounts that were being
6 distributed on an annual basis.

7 If we're going to inject a new party, so to speak,
8 into this -- a SOAF -- then it actually raises a fair amount
9 of complexity that presumably will be reflected in the
10 intercreditor agreement. (indiscernible) to make it clear
11 that that significant interest in that, but one of the
12 issues which I'll complete my thought -- one of the specific
13 issues that we were concerned about was that there are some
14 payments that are proposed to go to this SOAF that are early
15 and then the bulk of the payments are being made in the
16 later years, years 11 to 18.

17 And there's a very specific provision in the plan
18 documents that (indiscernible) to enforce (indiscernible)
19 collateral, and while all parties may have an interest in
20 the collateral, we did not want there to be a suggestion
21 that by enforcing -- if the MDT is enforcing against the
22 collateral, that should not give rise to an acceleration of
23 payments that are due in years 11, 12, 17, or 18, that the
24 waterfall, so to speak, will not be ignored.

25 Obviously, if there's an acceleration and if there

1 is what we call the snapback and parties are pursuing their
2 individual remedies, then at that point in time, people can
3 do whatever they want and the plan preserves that and that
4 would be true for all of the state. But in the event that
5 there has not been a snapback and really looking to the
6 collateral, that should give rise to an out-year payment
7 accelerating its right and competing with early payment.
8 (indiscernible)

9 THE COURT: Well, as you've noted, the settlement
10 agreement doesn't spell that out. It contemplates that a
11 proper intercreditor agreement is to be negotiated in good
12 faith, and I think I tend to agree with you as well as the
13 Debtors and the committee that that issue is kind of a high-
14 class issue. If that were the only issue, I don't think
15 there would be -- I think that would be resolved, let's put
16 it that way. But the order that's being sought here doesn't
17 lock in a particular result on that, although, I have
18 confirmed that there's no contemplation of changing the
19 first pay-out provisions for the personal injury claimants.

20 Okay. Thank you.

21 MR. ECKSTEIN: Your Honor, with that, I would rest
22 on our papers and thank the Court for the opportunity.

23 THE COURT: Okay. Very well. Thank you. All
24 right. I think I see counsel for the U.S. Trustee. Do you
25 want to go next?

1 MS. EITEL: Yes, Your Honor. Thank you. Nan
2 Eitel, Department of Justice and Executive Office for U.S.
3 Trustees.

4 As set forth in the U.S. Trustee's brief, no one
5 could really dispute that more money to abatement of the
6 opioid crisis which OxyContin played such a major role is a
7 very good thing, and we commend the nine and the parties for
8 the resolve to get the Sackler family to give back more of
9 the money that they took out of Purdue in its profits.

10 But I'm going to make I think a very different
11 argument this afternoon than I thought I was going to make
12 as of 11:00 a.m. and I hope the Court will bear with me
13 because the sands have shifted quite a bit since then.
14 There are legal impediments to approving this term sheet as
15 set forth in the brief, but I think there are additional
16 ones that arise as a result of the statements
17 (indiscernible) today. I'm encouraged to hear Your Honor
18 say that there would be a plan that have to come back before
19 you at some point in time after the appeals are concluded
20 and that confirmation objections are reserved and nobody's
21 rights are being prejudiced by what's being done today. So
22 that does eliminate some portion of the objection as filed
23 by the U.S. Trustee.

24 But now I have the question of, why are we even
25 here? Mr. Huebner went out of his way to say that this is

1 not a estate property. This is deal between two third
2 parties, has nothing to do with the Debtor. We had the
3 unsecured creditors committee say in paragraph 15 of their
4 brief filed this morning that the parties -- that the
5 Court's not being asked to police the conduct of third
6 parties. And so do we even have related to jurisdictions --

7 THE COURT: Of course we do. This is a settlement
8 whereby over a \$1 billion is going to come into the estate -
9 - into the estate under an amended plan.

10 MS. EITEL: Your Honor, but the Debtors want to
11 have their cake and eat it too or pretend like this has
12 nothing to do with the estate, and I would agree with you,
13 it does have to --

14 THE COURT: They're talking about the 277 million.

15 MS. EITEL: Well, I -- and the 277 million like --
16 I know you disagree that Jevic is applicable here -- but the
17 Sackler family doesn't care how the money gets distributed.
18 They only care about what the value that get paid out.

19 THE COURT: In the first paragraph of Justice
20 Breyer's opinion it says this was property of the estate and
21 it was. It was a settlement of a fraudulent transfer claim.
22 Maybe if the U.S. Trustee actually had money in the game it
23 would understand these issues, but I don't think it does,
24 because it doesn't.

25 MS. EITEL: Your Honor, I understand that you take

1 a different very view of these issues than the United States
2 Trustee. I just want to make the point that I don't think
3 it's definitive that the 277 million is a (indiscernible).

4 THE COURT: I agree with that but that's all the
5 Debtors were talking about, is that amount of money.

6 MS. EITEL: And one of the difficulties that we
7 find ourselves in today -- and this goes to the point about
8 a future plan is -- we're in no man's land. We don't have
9 definitive documents. We don't have definitive agreements.
10 There are issues that are left to be (indiscernible) unless
11 anyone thinks that not having documents is a hypothetical
12 concern.

13 When the plan confirmation hearing started back in
14 August, the Debtors were on their sixth amended plan. They
15 took five tries during the confirmation hearing to get to a
16 plan that Your Honor thought could be confirmed. By the
17 time we got to the bench ruling in September 1, they still
18 hadn't done it, not the way that the Court thought it should
19 do, and you ruled contingent upon them filing a plan as you
20 very much directed.

21 So I'm concerned that we are going forward on some
22 kind of a term sheet that may or may not deal with the
23 Debtors' property, that may or may not preclude rights in
24 the future and determine things that are very important, and
25 we don't have documents. We -- it's 1127 plan modification

1 motion. We don't have a new plan. We don't have a new
2 disclosure statement assuming one might be needed. I
3 understand the Court has not decided that issue yet and will
4 decide it at the time that the Debtors make their
5 propositions.

6 But the -- in addition to -- I understand you
7 dispute the related to jurisdiction, but there's a Stern
8 problem here too. If this is just a dispute that's being
9 settled between the Sackler family and the nine states, then
10 -- and there's no relationship -- it's not an estate cause
11 of action, the Court could not adjudicate that, and so just
12 as the Court could not adjudicate the Sackler family dispute
13 with nine states, if it's truly not estate property, then
14 how can the Court approve a settlement today that does
15 precisely that? So I think in addition to the related to
16 jurisdiction issue, that there's a Stern problem as well.

17 I'll just briefly touch on the arguments that were
18 raised in our brief, Your Honor. I understand that you
19 disagree and that you do not want to hear from the United
20 States Trustee --

21 THE COURT: It's just such a fantasy. I mean,
22 it's just not real. I'm sorry. At some point, the U.S.
23 Trustee actually has to look out for the interest of people
24 that are actually getting money under this plan and not just
25 throwing up ways to kill it. This is just -- I just find

1 this reprehensible. I'm sorry. I have to say it. It's
2 just not right to be raising --

3 MS. EITEL: Your Honor --

4 THE COURT: -- issues like, "we don't know this,
5 we don't know that, we don't know something else." Well,
6 try to figure it out.

7 MS. EITEL: Your Honor, if we had the documents we
8 could but we don't.

9 THE COURT: I'm sorry.

10 MS. EITEL: That's the difficulty.

11 THE COURT: You know what? What is the difference
12 between this term sheet and a plan support agreement? None.
13 We have the documents.

14 MS. EITEL: Your Honor, there are --

15 THE COURT: The document's right here. It's the
16 settlement term sheet. That's what it is.

17 MS. EITEL: Your Honor, going into today's
18 hearing, it wasn't even clear that the Debtors were going to
19 file another plan. Mr. Huebner had to clarify that. Again,
20 it gets to the --

21 THE COURT: Of course, it -- well, I'm sorry. He
22 didn't have to clarify it unless someone really wasn't
23 paying attention. It was perfectly clear to me and anyone
24 else who read this that this was not a plan modification
25 motion. And so I don't really appreciate creating issues

1 when they're not there or coming up with hypotheticals or
2 professions of ignorance as opposed to focusing on the
3 actual issues before the Court and the money that would be
4 going out to the American people.

5 MS. EITEL: Your Honor, we're not confessing
6 ignorance and we're not making up hypotheticals. We have a
7 very contingent deal here. It's neither fish nor fowl. We
8 don't have all the documents. We have the outline of this--

9 THE COURT: Right. I've heard you on this before
10 and you can know what I think about it. Why don't you move
11 on?

12 MS. EITEL: I will move on, Your Honor. One of
13 the findings the Court's being made -- asked to make is that
14 no provision of this term sheet that's being approved
15 contravenes the Bankruptcy Code. The Court can't make that
16 finding because the term sheet still maintains the section
17 10.7 releases that were vacated on appeal and the district
18 court says there was no authority.

19 THE COURT: It's -- we -- were you listening at
20 the beginning of the hearing? Apparently not. It's
21 contingent upon the reversal of the district court's order
22 and therefore, necessarily is --

23 MS. EITEL: But the entry of the --

24 THE COURT: -- contingent upon a finding the
25 releases are proper. Period.

1 MS. EITEL: Your Honor, the finding that you're
2 being asked to make in the proposed order today is that no
3 provision in the term sheet --

4 THE COURT: I know the finding and I've just said
5 what it consists of. Move on. I already clarified this
6 with Mr. Huebner at the beginning of the hearing two and a
7 half hours ago.

8 MS. EITEL: Your Honor, for the same reason that
9 the term sheet contravenes the -- excuse me -- the order
10 asks the Court to make the finding that it does not
11 contravene the Code, then they don't make it contingent on
12 that. The rest of the deal is contingent. The rest of the
13 deal is contingent upon them ultimately prevailing on
14 appeal, but there's -- one thing that nobody's --

15 THE COURT: The term sheet itself is contingent
16 upon that in multiple places -- on the approval of the --
17 the grant of the appeal by the Second Circuit and
18 confirmation of a plan.

19 MS. EITEL: Your Honor, I'll leave it at this.
20 It's not clear based on the shifting sands today whether --

21 THE COURT: It's clear to everyone except the U.S.
22 Trustee and I think that's because everyone else actually
23 has money in the game.

24 MS. EITEL: Your Honor, Congress created the
25 United States Trustee for a reason because --

1 THE COURT: I understand and I think that there's
2 nothing wrong with what the U.S. Trustee generally does. I
3 do think that in this case, the U.S. Trustee should be
4 asking itself one simple question. Does it want to be
5 fighting about the potential reversal where there's 4.5
6 billion for the American people or does it want to be
7 fighting about the potential reversal where there's 6.5
8 billion for the American people?

9 MS. EITEL: There's no doubt --

10 THE COURT: Or does it just want a reversal
11 period? Or does it want chaos? It should be asking that
12 question and be acting accordingly.

13 MS. EITEL: The United States Trustee in no way
14 wants chaos and the U.S. Trustee also finds it very
15 (indiscernible) objected to have additional money to abate
16 the opioid crisis, but Your Honor, I will end with this.
17 The ends cannot justify the means. The most noble goal and
18 the most (indiscernible) cannot eviscerate the Code. That
19 is simply it. There are rules that are set out in the Code
20 and the parties need to abide by them, and as we sit here
21 today, we have no plan and we are awaiting a result of
22 appeal and the Court is being asked to do something that's
23 very unorthodox.

24 Again, the rules matter. The Code matters. The
25 rule of law matters and I am sorry that that is really so

1 irritating to everyone here but that's the role of the U.S.
2 Trustee --

3 THE COURT: I believe I am applying the law,
4 ma'am. What I'm asking you to do is to focus on the actual
5 facts as opposed to raising what I believe are willful
6 statements that you don't understand what's going on and
7 arguments that simply just don't make sense like the Court
8 doesn't have jurisdiction. It just doesn't -- it really --
9 it doesn't make sense.

10 MS. EITEL: Well, it doesn't make sense for the
11 Debtors to want to have their cake and eat it too. They
12 want to pretend like this has nothing to do with the estate
13 but they want the Court to exercise 363 authority to approve
14 the deal because it's using property of the estate. I mean,
15 there is some portion of this that should either just be
16 struck and not approved by the Court because it has nothing
17 to do with the estate or it's just -- I find that
18 incomprehensible and with that, Your Honor, I rest.

19 THE COURT: Okay. Very well.

20 All right. There were other objections. There
21 were -- there was an objection by the committee and
22 creditors and there was an objection on behalf of certain --
23 objections -- on behalf of certain personal injury
24 claimants. So Mr. Underwood, do you want to go ahead?

25 MR. UNDERWOOD: Certainly, Your Honor. Thank you.

1 Good afternoon, Your Honor. This is Allen Underwood of the
2 firm of Lite DePalma Greenburg & Afanador on behalf of
3 certain Canadian municipal and first nation creditors.

4 First I want to make clear, Your Honor -- thank
5 you for your time today, by the way -- but also to make
6 clear, the counsel for the nine states have done a
7 remarkable job in this case, and the document that we filed
8 is not a direct opposition to the settlement that is
9 proposed here or the result of the settlement in principle.
10 I think where the Canadian creditors are coming from today
11 is entirely different from the position that every other
12 creditor has -- that has objected has come at this issue.

13 Everyone else seems to be interested as to where
14 the funds are ultimately going, how they'll be distributed
15 and so forth. Our question really has to do more with the
16 source of the funds for this settlement. And obviously,
17 disclosure is the hallmark of bankruptcy. The source of
18 these funds are clearly insider related funds. Mr. Huebner
19 stated repeatedly that this is the Sacklers paying from
20 their own funds, the Sacklers paying with their own assets.

21 The fact of the matter is, it's unclear from the
22 documents that were filed exactly -- exactly, I think --
23 where these funds are coming from. And the crux of the
24 Canadian objection and at its heart is simply that there is
25 a -- it's not in the term sheet. It's in the application

1 and it states the Sacklers will pay an additional 723 so
2 forth billion dollars to the MDT to an additional 500
3 million consisting of 90 percent in the amount at which --
4 that's if (indiscernible) net proceeds from the sale of the
5 IACs exceed \$4.3 billion.

6 Now if were we to look at the IACs on a global
7 basis, that's fine, but there is an exception, I think,
8 which should apply here with respect to Canada because the
9 Canadian claims or the causes of action the creditors have
10 in Canada have been restrained. The matter is subject to a
11 CCAA proceeding in Canada and it's subject to a related
12 party order in Canada. So the Sacklers have had the benefit
13 of certain protections over these --

14 THE COURT: Well, can I interrupt you, Mr.
15 Underwood, because I think this is really a question to ask
16 the Debtors. Is it intended that this settlement modify or
17 violate any order that's in effect in the CCAA proceeding in
18 Canada?

19 MR. HUEBNER: Your Honor, the answer clearly is
20 no. Nothing -- I mean, the order asked really for no relief
21 with respect to the 277 except that it doesn't violate the
22 Bankruptcy Code. I'll talk about that in a few more
23 minutes.

24 Mr. Underwood's concern that somehow this is
25 giving license to a fraudulent transfer in Canada or evading

1 Canadian law or applicable judicial rulings -- we don't --
2 we didn't understand the argument. Obviously, there can't
3 even be a legitimate claim (indiscernible) something in the
4 one line that is relevant to this in our order permits the
5 Sacklers to violate non-U.S. law or non-U.S. legal
6 proceedings. There's certainly nothing remotely supported
7 (indiscernible) to the contrary.

8 THE COURT: Okay. And frankly, it wouldn't
9 violate -- I mean, that's how I took it. Well, I read this
10 objection to maybe saying two things, Mr. Underwood. The
11 first was the one that I asked Mr. Huebner about which is,
12 is this addressed -- is this relief addressed in any way to
13 any order of the Canadian court and the CCAA? And I think
14 clearly the answer is no. I wouldn't grant such relief. I
15 don't have the power to change those orders, but I wouldn't
16 grant such relief.

17 Secondly, I don't view the relief that's being
18 sought here as overturning applicable non-bankruptcy law as
19 far as, you know, fraudulent transfers, preferences, et
20 cetera. That's not what's being sought here.

21 MR. UNDERWOOD: No, I understand, Your Honor. I
22 think the concern ultimately is -- and I think it's a
23 representation that the Sacklers and the Debtors could make
24 is that they're not going to employ Canadian funds as
25 opposed to global funds --

1 THE COURT: No, that's a different point. That
2 goes too far. But I think a legitimate point is that this
3 doesn't override the Canadian court's orders or applicable
4 non-bankruptcy law as to transfers.

5 MR. UNDERWOOD: All right, Your Honor. Thank you
6 very much. I appreciate your time.

7 THE COURT: Okay. All right. I'm not quite sure
8 who's next.

9 MR. TATE: Judge, I'll -- I guess I'll just go
10 next and I will be extraordinarily brief. I'm here because
11 I represent 35 unions. That's over 100,000 union members.
12 I represent 69 incorporated government entities on Long
13 Island. That's a population of about 3 million folks. I
14 represent a number of hospital authorities and a number of
15 entities -- governmental entities -- in New Jersey. And New
16 Jersey, of course, is a very proud -- in a very proud
17 position right now because of work that a number of good
18 firms did to get them up to 100 percent participation level
19 of the MDL National Opioid Settlement deal.

20 I filed my objection. I want to narrow it just to
21 a couple of things. First of all, I'd like to -- in
22 addressing and modifying the objection that I filed on
23 behalf of my clients -- note that we do not believe that
24 there is a problem with the lawyers who represent the nine
25 in getting paid. There are two concepts that I love more in

1 life than many things that I should probably love more, but
2 I love the concept of more and I love the concept of right
3 now. And I think those that work so hard to make those two
4 concepts come to fruition -- I think they should get paid.

5 Our sole issue and sole problem here is, given the
6 populations that we represent and the number of folks that
7 we represent and the entities that we represent, we believe
8 that the increasing -- and the increase, the amount of money
9 being paid by the Sackler family, especially in this
10 situation where there may be some issues about
11 enforceability of judgments against them -- we think it's
12 great to get more.

13 On behalf of my clients, we simply believe as many
14 do who have objected that the money obtained by the nine
15 should be distributed according to the plan that this Court
16 approved and is now up on appeal. And that's why we filed
17 our objection and that's what we're urging here. And
18 obviously, the Court has discretion to determine what's done
19 here and we respect that but on behalf of my clients we were
20 simply compelled to raise that to the Court. And I
21 appreciate you -- I appreciate the Court allowing us to have
22 the time to make these statements.

23 THE COURT: All right. I read this objection and
24 it has a long footnote listing the clients, and I did want
25 to ask you, they seem to me to fall into three different

1 buckets. I may not -- I may be wrong about that, but the
2 class in which the nine states and the District of Columbia
3 that would be sharing in the 277 million reside is class 4,
4 which is the non-federal governmental entities.

5 I may be wrong, but I think, while some of your
6 clients fall into that class, others don't. Am I right
7 about that?

8 MR. TATE: Yes, Judge, you are correct about that.
9 The Court is right, some of them do not fall into that
10 class, and I understand that to the extent that they were
11 dropped in footnote which is a lengthy footnote which I
12 detest seeing on this, but the Court is correct that not all
13 of them fall into that class. And, obviously, our objection
14 should be modified in that regard and I'm happy to do it in
15 writing or do it here on the record.

16 THE COURT: That's fine. I do think the law is
17 clear. In fact, I think the statute's clear that if one
18 were to be objecting --

19 MR. TATE: They got to have standing.

20 THE COURT: They would have to have standing, and
21 therefore they would have to be in class that's affected by
22 the carve out and some are and some aren't.

23 MR. TATE: That's correct, Judge, and we can
24 clarify that.

25 THE COURT: All right.

1 MR. TATE: They were listed in that fashion simply
2 as an anchor to windward and that's done.

3 THE COURT: I just -- the authority for that stems
4 ultimately from Kane v. Johns-Manville Corp, 843 F2d 636,
5 654 (2d Circuit 1988). There's another case that's even
6 more on point on the classification issue which is 1199 SEIU
7 National Benefit Fund v. Akorn Industries -- I'm sorry --
8 U.S. Inc. -- I'm sorry -- Akorn, Inc., 2021 U.S. Dist. LEXIS
9 108 -- I'm sorry -- 180788 at page 33 (D. Del. September 22,
10 2021), and 7 Collier on Bankruptcy at paragraph
11 1123.01(a)(1)[4][B] also says it. But you got it.

12 That's no -- I understand we're on the same
13 wavelength. And on the other points, I think it's -- I'm
14 not going to -- I think it's the same points that I've
15 raised with Mr. Guard and Mr. Eckstein and Mr. --

16 MR. TATE: Judge, it indeed is. I'm simply making
17 those statements on behalf of my clients.

18 THE COURT: Right. That's fine. Thank you.

19 MR. TATE: Thank you, Judge.

20 THE COURT: Okay. There were other objectors. I
21 don't know if anyone else wants to supplement their
22 objection or have oral argument in addition to their
23 objection? I read each of these objections, again.

24 MR. OZMENT: Your Honor, this is Frank Ozment. In
25 relation to your comment regarding Mr. Tate's clients, I

1 acknowledge that Stacy Bridges and Crayton Bloyd and Charles
2 Fitch are not secured creditors as we noted in our footnote.
3 We have -- hope to achieve that status in one form or
4 another. Thank you for clarifying the impact of today's
5 hearing regarding issues that would otherwise be adjudicated
6 under 1127.

7 In that regard, I would like briefly to add that I
8 think what you will hear tomorrow which will likely be a
9 very painful day of testimony or at least remarks is that
10 many of the people who are testifying or speaking about
11 their experiences as survivors of people who died from
12 opioid deaths or opioid overdoses would give everything if
13 their clients or, I'm sorry, their family members had had
14 adequate treatment. And in the event that there is some
15 sort of reconfiguration regarding how this money --
16 additional money -- is to be spent, I think that ought to be
17 taken into account.

18 I think the other thing that you'll hear from them
19 in all likelihood tomorrow is that many of them, you know,
20 supported confirmation or at least did not object to
21 confirmation because they thought this is as good as it
22 gets. If it gets better, I think they'd like to see more
23 benefits going directly to those claimants who are opioid
24 use disorder victims in active recovery. But that's all I
25 have.

1 THE COURT: Okay. Well, I will reiterate the
2 standing point. Your clients are not in class 4 and
3 therefore the equal treatment issue wouldn't apply based on
4 the same authorities that I previously cited, and when we do
5 get to 1127, I just want to point out to people that as long
6 --

7 MR. OZMENT: I understand.

8 THE COURT: -- it's not being taken away from you
9 but really added into what others are getting, it's not
10 really a material adverse modification.

11 And the other thing I'll say is that I think it is
12 important that the roughly 20, 25 percent of this settlement
13 that is not going into the NOAT trust, which is clearly a
14 trust for abatement, treatment, et cetera, is also to be
15 dedicated as I've read a couple times from the term sheet
16 and I think this is -- it's worth repeating -- "shall be
17 devoted exclusively to opioid related abatement, including
18 support and services for survivors, victims, and their
19 families."

20 As Mr. Eckstein said, hopefully some flesh will be
21 put on those bones to clarify the nature of that. But that
22 is an important promise that the states do not have to make,
23 and really has not been made until this case. So, thank
24 you, Mr. Ozment.

25 MR. HUEBNER: Your Honor, if now is the right

1 time, I think that (indiscernible) common benefit, it would
2 probably make sense to spend a few minutes addressing, in
3 brief, a few of the items raised.

4 THE COURT: Okay.

5 MR. HUEBNER: I think it will also give parties
6 comfort and we minimize future discomfort.

7 THE COURT: Okay.

8 MR. HUEBNER: Let me begin with Mr. Guard, for
9 whom, as I believe, I made clear at the outset. We have
10 enormous respect and full well understand his extraordinary
11 efforts for many years. First of all, with respect to the
12 joinders, I actually believe that I said it in an
13 appreciative way as opposed to getting it from two different
14 briefs, there were joinders and I certainly have no problem
15 with that and, in fact, we appreciate the courtesy of Mr.
16 Guard framing the issues earlier for the Court and the other
17 parties who, in fact, accorded with his articulative
18 objection filing joinders instead of xeroxing it or putting
19 it on the word processing systems and filing any one of
20 them. So, I do want to be clear, I intended that somewhere
21 between mutual and thank you, but it's not otherwise
22 perceived.

23 Number two, Your Honor, Mr. Guard suggested that
24 Your Honor could simply not rule today because if there's no
25 problem if the Second Circuit briefs get filed because we

1 could just figure stuff out later and maybe cut a different
2 deal. With all due respect, that is not the Debtors' deal.
3 The reason we moved to shorten notice, which nobody objected
4 to, is precisely because we believe quite passionately that
5 having this ruling today or tomorrow -- tomorrow, not today,
6 after the rest of the hearing happens and before the briefs
7 hit the docket, is actually of great importance in terms of
8 having the Second Circuit understand where things lie and
9 the like and I'll just leave it at that. I think it's
10 pretty obvious why, I think it's, nine briefs filed by
11 sovereigns is different than having filed at some point in
12 the future.

13 THE COURT: Well, it locks --

14 MR. HUEBNER: With respect to --

15 THE COURT: I mean, I think, equally important, it
16 locks in a billion -- a billion to a billion and a half
17 dollars. I mean, that's --

18 MR. HUEBNER: I was going to get to that next.

19 THE COURT: All right.

20 MR. HUEBNER: Which is, the estate is giving up
21 nothing other than the payment of a few million dollars of
22 legal fees in exchange for locking in, hopefully, \$1.4
23 billion to be distributed under the Plan and a higher and
24 hopefully faster probability of success on the merits of the
25 Second Circuit, which every single party in the entire case,

1 except for about 12, now, we believe, is aligned with. Your
2 Honor, with respect to the arguments made both by Mr. Guard
3 and by Mr. Cahn with respect to, maybe this isn't really the
4 Sacklers' money, there actually is a Code provision that
5 actually governs what is property of the estate. And
6 541(a)(3) is quite clear that once property is recovered by
7 the Debtors, it becomes property of the estate. But
8 541(a)(4) is clear, that is that if property is preserved or
9 transferred to the estate, it becomes property of the
10 estate. So, there's a very interesting argument one could
11 have whether the Sacklers' first \$4.325 billion is already,
12 somehow, property of the estate because we have a
13 settlement, but for worse or for better, they've reported
14 that they have many billions in excess of that.

15 And the argument that right now, with a settlement
16 that, whose primary economic terms are not objected to by
17 actually anybody other than the nine, but all of the rest of
18 the Sacklers' money, out of which they're paying the 277 is
19 somehow already the estate's money and that therefore, maybe
20 they're paying the 277 out of the estate's money is just not
21 -- it's not the law because there are Code provisions that
22 are directly on point. So more importantly, we all agree,
23 including every single objector here today who spoke, to
24 accept \$4.325 and to accept that as the settlement and to
25 now say -- and Mr. Cahn pointed out that West Virginia

1 objected, only to the allocation. We confirmed yet again
2 today that that objection was resolved and that they had no
3 problem with the \$4.325. So, to now come and say, but maybe
4 the other \$277 million is also currently owned by the estate
5 and is deemed settled and paid for with estate funds is
6 simply a dissonance that I think cannot be allowed to stand.

7 THE COURT: Look, I think if what were being
8 settled in this settlement agreement were not only the
9 third-party release issues, but the estate's fraudulent
10 transfer claims, it would be a different story, right? We
11 agree on that.

12 MR. HUEBNER: Exactly, Your Honor. That's my
13 point. The estate claims, which are ours, were settled
14 several months ago, with universal creditor support, and the
15 only issue left was a small number of parties asserting that
16 their separately owned claims could not be resolved without
17 their individuated consent, and nine of those parties have
18 now settled that. Mr. Guard's next point that, as a
19 bankruptcy policy matter, something about the resolution
20 that was reached encourages side-deals, leads me to, sort
21 of, two different streams of thought. One is, with respect
22 to bankruptcy policy, Your Honor, it is very often the case
23 that individual creditors of a debtor also have different
24 rights against third-parties. They have guarantees, they
25 have LC's, they have keepwells, they have intercreditors,

1 they subordination agreements, and the like. And the
2 reality is that right now, the nine were differently
3 positioned than others and they cut a deal that on the main,
4 is of inordinately majority benefit to all creditors and
5 also contains a benefit for them. I would note the irony
6 that had the almost universally supported confirmation order
7 not being reversed, the ability to do that would not have
8 even existed, which is why we believe so passionately that
9 third-party releases in very rare circumstances were
10 appropriately justified and are actually critical to
11 bankruptcy policy because they prevent the problem of -- why
12 don't we just say the differentiated holdout party.

13 Your Honor, with respect to what I'll just call
14 the penumbra of 1127 issues, I'm going to combine a couple
15 of objectors here and I don't have many points, just so the
16 Court knows. You know, you can read our motion and order as
17 many times as you want, you won't see a reference to 1127 in
18 the relief requested, you won't see any provisions in the
19 order that allow for and direct or permit the amendments to
20 the plan. Like, for example, swapping out the foundation
21 promise for cash on the Effective Date, which is a plan
22 amendment. It's just not there, and it's not there for a
23 reason. We've looked very hard at the caselaw and went back
24 and forth about whether, at this juncture, it was
25 appropriate to keep the 1127 relief on a contingent basis

1 and decided that it was not, that the better view was to ask
2 for as little as possible of the Court today.

3 And when the time is right, I want to be very
4 clear about this, if the Second Circuit reverses judgment
5 matter or more importantly, the Second Circuit affirms Your
6 Honor and simply says, "Clear for takeoff. Confirmation
7 order is back in force," we will then make an 1127 motion
8 and it will be seeking extremely modest relief, I guess, of
9 the sort. There is an unthinkable benefit to everybody
10 because it will swap the foundations for cash, it will add
11 \$898 million to \$1.398 billion of new money. It will --
12 it'll address some technical weaving this into the deal
13 issues, there's a (indiscernible), it's actually more
14 complicated, but that's just a corporate law thing that
15 people who need to, already know what needs to be done, and
16 it will allow for the collateral and then we will have the
17 discussions that were referred to by Mr. Preis and Mr.
18 Eckstein. If somebody wants to object to that and say, "No,
19 we don't want \$900 million to \$1.4 billion", or they believe
20 that somehow, they're maybe worse off by the estate getting
21 hopefully over a billion dollars more to save American
22 lives, they are welcome to make that objection at the time
23 and we look forward to addressing it for whatever court is
24 going to be there to hear it. But today is not that day and
25 there are no shifting sands of any kind.

1 With respect to Mr. Eckstein, just really want to
2 just choose very quick, tiny points. Number one, with
3 respect to the mutiny issue and this blends also with the
4 U.S. Trustee's point, the 277, as I've now said about 40
5 times in 40 different contexts, is not the estate's money,
6 it's not the Debtors' money. And so, I don't know that the
7 Court has the right and I don't think anybody's requested
8 that the Court order how the nine spend their money. The
9 good news is, we're almost all the way there on these sub-
10 issues. Obviously from the beginning, it was a big news
11 because we were not agreed to move forward with something
12 and I think it was a shared vision, as it has been for two
13 and a half years that every dollar that doesn't go to
14 victims goes to abatement related issues. Most of the
15 states have already confirmed among the nine and it's a
16 little bit more complicated, but in broad brushstrokes, that
17 they'll be using the money more or less consistent with or
18 similar to or the like. The issue is that they're threading
19 state law issues and that's why that's not already there in
20 black and white. But the social goals, I actually think are
21 shared by everybody. But to the extent possible, there's
22 going to be a fair involvement because the Court's stay its
23 active part through localities and boots on the ground and
24 the like. And then on to the U.S. Trustee --

25 THE COURT: Can I interrupt you on this point? I

1 agree with -- that makes perfect sense to me. I understand
2 that point. I do think that, to avoid second guessing in
3 the future, they -- and I trust this is what people will be
4 focusing on, will probably want something fairly carefully
5 drafted either in supplement to the plan or an order so that
6 some person who says, "Well, you're not doing it right,
7 you're unauthorized to do this, you didn't agree to do this,
8 you agreed to do something else, and we disagree with it" --
9 I think they'll probably want that, the parameters of what
10 they agreed to do laid out, and I think that's part of the
11 work that needs to be done and it's part of why the Debtors
12 are agreeing to pay attorneys' fees to focus on things like
13 that.

14 MR. HUEBNER: And Your Honor, I firmly can't over
15 speak for the nine. They are certainly not my clients, but
16 I think the general (indiscernible) issue appears to be one
17 of shared vision. I mean, I am confident that that will get
18 worked out.

19 THE COURT: Okay.

20 MR. HUEBNER: The U.S. Trustee raised, I guess,
21 both Stern v. Marshall and jurisdiction issues. Those, I
22 don't think, need much time. To be fair, Stern v. Marshall
23 has no applicability when there is consent when coming
24 before the bankruptcy court. And to the extent that there
25 are parties to the legality under the Bankruptcy Code, which

1 is a uniquely Bankruptcy Code issue, it is the nine, the
2 Sacklers, and sort of the Debtors, have clearly consented to
3 this being brought before the Bankruptcy Court. So, I
4 can't, for the life of me, understand how there could be a
5 Stern v. Marshall problem when the affected parties
6 consented. I would also note, for the reasons we put in our
7 briefing to the District Court, to the Second Circuit, this
8 is a "mini-me", as it were, of the much larger issues, for
9 which we believe passionately certain Stern v. Marshall
10 issues in the first place.

11 With respect to general jurisdiction, I would just
12 note that one need not actually look farther than Judge
13 McMahon's own ruling, which ruled for the Debtors down the
14 line on jurisdiction and noted that SPV Osus says, the
15 governing Second Circuit law says, that if something has any
16 conceivable effect on the Debtors, jurisdiction applies.
17 Having nine briefs not filed on Friday, an appeal in which
18 hundreds or thousands of American lives, not just money but
19 lives are probably at issue through the good that the
20 creditors in this case hope to do, coupled with getting \$900
21 to \$1.3 billion more money to save American lives through
22 the Plan's existing allocation mechanics, we think we don't
23 have to say much more about their being any conceivable
24 effect on the Debtors' estates.

25 Your Honor, I don't even really understand the

1 sort of (indiscernible). Honestly, the 277, as I've
2 described before under 541(a)(3) and (a)(4) and the existing
3 plan, the settlement of estate claims, it's not the Debtor's
4 money. There's nothing remotely even intellectually
5 interesting here, but the states will not stand down from
6 filing their briefs on Friday unless they are given some
7 comfort in this Court and this not view these payments as
8 violating the Bankruptcy Code, and given that we had a bunch
9 of objections whose motivating emotion we not only fully
10 understand, but we agree with and empathize with, was
11 exactly that and actually proved why they were asking for
12 this ruling/comfort order.

13 And Your Honor, in that respect, I should note
14 that similar arguments were raised with respect to the PI
15 Order in particular that Mr. Eckstein raised at the time of
16 the DOJ settlement and Your Honor actually held two lengthy
17 hearings that addressed, including among other things,
18 whether the Sacklers open public settlement with the DOJ for
19 \$225 million implicated, or worse, violated, the anti-
20 secretion provision. You issued an order on November 18,
21 2020, entitled, "Order Confirming the Payment by the Sackler
22 Families Under Settlement with the United States Department
23 of Justice is not prohibited by this Court's Preliminary
24 Injunction," and the second paragraph says that exactly.
25 So, just so that everyone understands, we thought about all

1 these issues and obviously got ourselves comfortable.

2 We would never ask relief of any court, let alone
3 this Court who has labored with all of those for two and a
4 half years, to do the right thing here, but we did not think
5 it was appropriate and we think this is, frankly law of the
6 case, not as a settlement with the DOJ at the time and
7 hopefully (indiscernible) had tremendous benefits for the
8 estate. This is a settlement with nine states, of which we
9 believe the same is true. The Court went on in that order,
10 because the fraudulent transfer claims had not yet been
11 settled, to put in place, sort of, "but this and if then, if
12 X then Y," none of those are actually applicable anymore now
13 that the claims have been settled and the Sacklers are
14 pursuant to, sort of, a universally supported settlement, no
15 longer have -- in other words, I think, clearly now have
16 assets that we have agreed to cease litigating to obtain in
17 exchange for the settlement of the same claims. But I do
18 note that, I think, there's a (indiscernible) case issue on
19 the PI --

20 THE COURT: Well, let me -- I mean, we talked
21 about this at the beginning of the hearing. Again, the
22 settlement agreement says that the approval order shall
23 state that the agreement doesn't contravene any provision of
24 the Bankruptcy Code, and it doesn't say "any prior orders in
25 these cases." If the Circuit grants the appeal, I don't

1 believe that this settlement would contravene the
2 preliminary injunction, and I am familiar with the
3 preliminary injunction. I do think, though, that if the
4 Circuit does not grant the appeal, but upholds the District
5 Court's Order, you would need those --

6 MR. HUEBNER: It never gets paid, Your Honor.

7 THE COURT: No, but you -- well, I don't think it
8 would get paid, but -- except for Paragraph 11, which is a -
9 -

10 MR. HUEBNER: No, Your Honor. No, let me make
11 your life a lot easier. This is the very rare reverse
12 Catch-22. It's like a tautology that there can't be a
13 problem. If we're cleared for takeoff, the 277 gets paid as
14 part of us getting our money and the Sacklers have the other
15 billions. If the Second Circuit says, "No, you're not
16 allowed to emerge," the 277 never gets paid. It's -- it can
17 never be an issue. The provision of Paragraph 11, Your
18 Honor, does something very different.

19 THE COURT: Okay.

20 MR. HUEBNER: That says, if you make a ruling or an
21 appellate court reviewing were ruling, today finds that, for
22 some very specific reason, they can't pay the 277, we'll
23 just find another pathway to get a different order, but in
24 all events, that's all still entirely contingent on the plan
25 going effective. And if you look, Your Honor, in

1 "Implementation" in Arabic 1 at the end, as Mr.

2 (indiscernible) notes to me, you'll see it in black and

3 white, but again, I'm happy to let you take my word for it

4 and represent --

5 THE COURT: In Paragraph 2 of the Implementation,

6 it says, "-- other than as provided in the provision

7 beginning, 'if any payments above," which is Paragraph 11,

8 "this Agreement shall be void --". But what you're saying

9 is that Paragraph 11 just deals with -- it does, in the

10 first sentence, the reversal of my order on this motion --

11 MR. HUEBNER: Yeah.

12 THE COURT: -- not on the -- not if the appeal is

13 denied.

14 MR. HUEBNER: Correct, and right above 2, at the

15 very end of 1, it's all contingent upon entry upon approval

16 order and consummation of the Plan.

17 THE COURT: Okay.

18 MR. HUEBNER: That's what the Court is here

19 looking for. If there's no -- so it's literally impossible

20 that the 277 gets paid out of money that the Debtors might

21 have a right to because it only gets paid when the Debtors

22 and their estates get 5.5 to 6 and the Sacklers keep the

23 balance, etc.

24 THE COURT: Okay, well I'm glad we've cleared that

25 up. I guess --

1 MR. HUEBNER: Well, with respect to --

2 THE COURT: So, again, I'm uncomfortable with
3 saying it doesn't violate any order I've entered, because I
4 haven't looked at all my orders. I don't believe it would
5 violate the preliminary injunction.

6 MR. HUEBNER: I actually believe, based on emails
7 that we're getting in the background, that that actually is
8 what people were actually looking for now that we've all had
9 some colloquy about it.

10 Your Honor, I don't think I need to say anything
11 about Canada. I hope that we've all relayed --

12 THE COURT: I don't think you need to do either.
13 I think that's been clarified to Mr. Underwood.

14 MR. HUEBNER: So, I only have two final things to
15 say. Number one is an error side point because I think that
16 as people think about this (indiscernible) matters and I
17 actually have a whole module that I threw on the floor and
18 I'm not doing. But let me just give you numbers to think
19 about because they're helpful. At the low end, Your Honor,
20 if you think of the 277 or you think of the SOAF payments as
21 "side payments" or off the top or commission or whatever the
22 objectors call it, of the larger settlement, (indiscernible)
23 the way that you reference it works, is that it's somewhere
24 between 13.4 percent and, at the ultra high-end, if every
25 decision is made in the direction of someone who is upset,

1 27.7 percent of the consideration. So, it's not 25-30, it's
2 not 30, there is a range depending on -- because for
3 example, even the 277, 52 of that would have gone to these
4 nine states and New Hampshire had it been distributed under
5 NOAT, so 277 is actually 225.3, but again, I'm not going to
6 --

7 THE COURT: That's a good point. I guess I didn't
8 take that into account when I was saying 20 percent or 25
9 percent. (indiscernible)

10 MR. HUEBNER: Correct, and that's my point, Your
11 Honor. If it's, you know, the net extra, as it were, of 225
12 out of, you know, the total consideration is actually 13.4.
13 If you view it as 277 full, with no crediting and you only
14 say there's a (indiscernible) because of the foundations,
15 etc., at the ultra high-end, it's 27.7. The (indiscernible)
16 priced somewhere in the teens, I think if somebody was a
17 mediator what they would do.

18 Your Honor, I have two final things to say and I -
19 -

20 THE COURT: Before you do that, I want to clear up
21 one point, which came up from something you said earlier in
22 your argument. You mentioned tomorrow, when I will be
23 hearing statements by people who've been affected by
24 OxyContin. I may be wrong about this. I looked through the
25 settlement, though, a couple of times. I think that the

1 scheduling of that process was at the request of Judge
2 Chapman in her Mediation Report, which I am happy to do. I
3 think it's important, very important. But I don't see it as
4 a continuation of this hearing. I see it as an element of
5 the settlement agreement. I don't think it's evidence for
6 this hearing. And that's important because I am ready to
7 rule today on your motion, but I want to -- maybe I'm
8 missing some provision of the settlement agreement that says
9 that this has to happen before the Court rules on the
10 hearing. I thought it was actually an aspect of the
11 settlement.

12 MR. HUEBNER: Yup. Chairman, let me address that.
13 I see (indiscernible) popping on, but hopefully I will
14 address the issue for you and if not, (indiscernible) speak
15 as they need to. Your Honor is exactly correct. It is
16 actually not found anywhere in the term sheet. It was not
17 part of the formal agreement among the mediation parties.
18 It was exactly as Your Honor notes, I believe Paragraph 14,
19 if my memory does not fail me, of the Mediator's Report,
20 which she very strongly recommends it. I believe, and
21 actually (indiscernible) Mr. Preis who was previously not
22 on, I believe very strongly, I hope I'm right, that this is
23 not evidence tomorrow because these people are not
24 represented. They are victims who have agreed and want to
25 tell their stories, their life and their traumas and their

1 concerns and their pain, and they want to tell it. The
2 Sacklers are watching and listening. But that's not the
3 same, I believe, as a witness presenting evidence in support
4 of a motion because I actually don't think this testimony is
5 in support of this motion. How I know, many of them love
6 the motion, but two don't. I don't think that's what
7 they're here for. But Mr. Preis, can I ask please, since
8 you have always been a primary shepherd of many individual
9 victims and circumstances like this, whether that is your
10 view, because it's actually much more important and accurate
11 than mine?

12 MR. PREIS: Your Honor, did you want --

13 THE COURT: I could barely hear you. I'm sorry.

14 MR. PREIS: Did you want to say something, or did
15 you want me to answer?

16 THE COURT: Well, the question is, I don't -- I
17 don't -- Mr. Huebner, in his closing remarks, said that day
18 2 of this hearing or, I wouldn't be ruling on this motion
19 until I heard tomorrow's presentations. And I'm not sure
20 that's correct. I think that tomorrow's presentations,
21 although perhaps definitely agreed to by the Sacklers, isn't
22 in the settlement agreement, but I think it is part of the
23 settlement. It's a recommendation by the mediator that the
24 parties to the mediation have agreed to, and the key point
25 is, I don't think it's evidence. I think it's part of the

1 settlement and consequently, I could rule today on the
2 motion before me.

3 MR. PREIS: Okay. Thank you, Your Honor. Yeah,
4 I've heard that question. The people who are speaking
5 tomorrow -- can you hear me, Your Honor?

6 THE COURT: Yes.

7 MR. PREIS: Okay. The people who are speaking
8 tomorrow do not believe that they are testifying.

9 THE COURT: Okay. That's my understanding too.

10 MR. PREIS: They (indiscernible).

11 THE COURT: Okay.

12 MR. PREIS: Okay, but they did believe, because
13 that's what my understanding was -- they did believe that
14 they were part of the hearing on the settlement. If that's
15 not the case, that's perfectly fine. I just -- I wanted --
16 so that I know what I should tell them, I'll be guided by
17 Your Honor.

18 THE COURT: I view their presentations as an
19 element of the settlement, not that they necessarily have to
20 agree to the settlement, but it is something that the nine
21 states and the District of Columbia and the Sacklers have
22 agreed to. And if they're willing to do it, meaning that
23 those speaking are willing to do it, I am very willing, very
24 happy to hear them. And it's important, it'll be part of
25 the record of the case, but I don't think it's evidence for

1 the settlement.

2 MR. PREIS: Understood, Your Honor.

3 THE COURT: It doesn't, by any means -- it
4 doesn't, by any means, limit the impact of what they're
5 going to say. It's just the context is not as evidence for
6 this settlement.

7 MR. PREIS: Understood.

8 THE COURT: Okay.

9 MR. UZZI: Your Honor, Gerard Uzzi from Milbank on
10 behalf of the Raymond Sackler Family. Can you hear me, Your
11 Honor?

12 THE COURT: Yes.

13 MR. UZZI: So, this doesn't change, I think, the
14 practicalities of what you said, but just for precision,
15 you're correct that this is not in the term sheet. So,
16 what's going to happen tomorrow is not, in fact, part of the
17 settlement. So, I don't think it's technically correct to
18 say we've agreed to it as part of the settlement. What has
19 happened is, though Judge Chapman has made a recommendation
20 and we have agreed, in connection with Judge Chapman's
21 recommendation --

22 THE COURT: Fine.

23 MR. UZZI: -- we're clear with it the way we have.
24 We have previously --

25 THE COURT: It's an agreement and it's part of the

1 mediation.

2 MR. UZZI: I think that's -- I just -- I don't
3 think the word "agreement" is quite correct, Your Honor, but
4 we will be there tomorrow. Let me just say it that way.

5 THE COURT: Well, okay. I mean, I think it -- all
6 right, fine.

7 MR. UZZI: Thank you, Your Honor.

8 THE COURT: Okay. Ms. Monaghan, do you have
9 anything to add to that?

10 MS. MONAGHAN: No, Your Honor, I think it's been
11 clarified. I think one of the things that we were concerned
12 about, and the only reason we're raising this point is, we
13 are certainly not planning on cross-examining any of the --

14 THE COURT: No, this is not evidence for this
15 settlement.

16 MS. MONAGHAN: And we don't want to be in a
17 position where not having done so implies anything for --

18 THE COURT: That's fine.

19 MR. UZZI: And Your Honor, just while I'm on the
20 green, at the end of this hearing if we can just take five
21 minutes to cover maybe some administrative questions for
22 tomorrow?

23 THE COURT: I'd rather not do that as part of this
24 hearing. If you have administrative questions, you can --

25 MR. UZZI: We could do it at the beginning of

1 tomorrow's hearing too. I just want to be --

2 THE COURT: Okay.

3 MR. UZZI: That's fine.

4 THE COURT: Very well. All right, so Mr. Huebner,
5 I interrupted you. Before you finished, I wanted to make
6 sure I understood the role that tomorrow's hearing played in
7 connection with this motion, and I do at this point.

8 MR. HUEBNER: Sure. I only have two final things
9 to say, then I will for sure be done. Number one, I do want
10 to reiterate that we have a tremendous amount of sympathy
11 for the objectors, the settlement and it's (indiscernible)
12 element. We certainly understand and I've now had this case
13 for four years and three weeks. I understand perfectly well
14 why it raises very painful issues. As I said in the
15 beginning, we wish there were no SOAFs, but as the fiduciary
16 from the estate side, our job is to do the greatest good for
17 the greatest number within the confines of the Bankruptcy
18 Code and our obligations under the federal legal system. In
19 that respect, we just don't think there could be a question
20 that the benefits to the estate that would come with no
21 costs to the estate are just simply enormous and they
22 translate with money and lives.

23 The final thing I will say, Your Honor, is that
24 the Court is not being asked to like SOAF or approve SOAF or
25 encourage SOAF or anything of the like. The Debtors'

1 business judgment was not at issue, the Debtors' use of its
2 own funds is not at issue. (indiscernible) Motion 363 and
3 also 105. The Court is asked to do only really one thing
4 with respect to SOAF, which is one, you've already done it,
5 which is confirm that you don't think it violates the
6 preliminary injunction, which again, based on the law of the
7 case and the case settlement, we think has to be the right
8 answer. And two, to conclude that the SOAF does not violate
9 the Bankruptcy Code and I think that the evidence we sent in
10 our papers and as we, sort of, hopefully enhanced the
11 understanding of today, we believe that to be true. That's
12 it, not more but also not less. We do think it's very time
13 sensitive and which we think that every creditor benefits
14 materially. It's the probability of avoiding a potential
15 liquidation and the loss of the Sackler settlement and, even
16 if we ultimately prevail on all issues, a longer trek
17 through the other process of Chapter 11 is avoided by this
18 settlement, in addition to its many, many other benefits
19 that are laid out in the papers. So, with that Your Honor,
20 I have nothing further.

21 THE COURT: Okay. Thank you. All right. I have
22 before me a motion by the Debtors for an order pursuant to
23 Sections 105 and 363(b) authorizing and approving a
24 settlement term sheet, a copy of which is attached to the
25 motion, that would resolve on the terms and conditions of

1 the term sheet, the objections of the so-called nine, namely
2 the eight states that appealed confirmation of the Debtors'
3 Chapter 11 Plan and the District of Columbia and in
4 addition, the State of New Hampshire, which objected to
5 confirmation, but did not appeal. And on the other side,
6 the Sackler parties and to a limited extent, the Debtors.
7 The Term Sheet reflects a remarkable and generally very
8 positive development in these cases, which is that, in light
9 of their victory on appeal, the nine entered into a
10 mediation ordered by the Court with the Sackler parties and
11 other parties who the mediator was authorized to add to the
12 mediation in her discretion, to see if their objection to
13 the Plan could be resolved.

14 That negotiation resulted in an agreement by the
15 Sackler parties to augment their payments in connection with
16 the Plan considerably, depending on their ability to sell
17 assets from a firm amount of a billion dollars to a billion
18 and a half dollars, again, depending on that ability. They
19 also agreed to simply pay \$175 million of incremental cash
20 under this settlement in lieu of what had previously been in
21 the Plan, which was to cause the foundations described in
22 the Plan to dedicate \$175 million to opioid abatement.
23 There are material non-monetary aspects of the settlement,
24 as well, that are quite important, including Sacklers'
25 agreements as to naming rights for institutions and

1 organizations in the U.S., rights as to the document
2 repository and what would be in it and the related agreement
3 not stated in the settlement agreement, but recommended by
4 the mediator that victim statements be made to the Court,
5 which are scheduled for tomorrow in the presence of at least
6 one member from each side of the Sackler families.

7 The agreement also provides for the payment on the
8 same terms and conditions as the payment of the AHC's fees
9 in the case for these settling parties, and it has been
10 represented that roughly \$2.5 million has been incurred to
11 date and it is estimated that there will be roughly no more
12 than \$2.5 million in the future.

13 The Agreement also provides for a feature, that,
14 unlike all of those other features -- which are not only not
15 controversial, but welcomed, I believe, by every party in
16 interest in this case except perhaps the United States
17 Trustee -- affect the Court's determination of this motion,
18 and it has been the centerpiece of the objections to the
19 Motion.

20 The agreement, if the conditions to it occur,
21 contemplates that, of the additional incremental value to be
22 paid by the Sackler family or the Sackler parties under the
23 Settlement, a portion of that value, namely \$276,888,000.87
24 would not be paid into the so-called NOAT or Master
25 Distribution Trust, which under the Plan then would have

1 distribution to various recipients of parties for opioid
2 abatement, but rather to a, defined term, SOAF facility for
3 the benefit of the settling states and the District of
4 Columbia in the amount specified in the Agreement, a
5 Supplemental Opioid Abatement Fund. That money, that
6 roughly \$277 million, as stated in the settlement term
7 sheet, "shall be devoted exclusively to opioid related
8 abatement, including support and services for survivors,
9 victims and their families, and each member of the nine
10 shall have the right to direct allocation of the SOAF funds
11 for such purposes in the amounts set forth in Attachment D
12 to the Agreement."

13 If one viewed these funds as property of the
14 estate, as opposed to being paid by the Sacklers, that would
15 change the distribution percentage for the settling parties,
16 depending on the contingencies on payment under the
17 Agreement from what they would be getting under the Plan
18 that is presently on appeal in the Second Circuit, to a plan
19 that would implement the settlement agreement, anywhere from
20 roughly 14 percent to roughly 27 percent after taking into
21 account that some of that money, a fairly large portion of
22 it, roughly \$50 million, would have been allocated through
23 the Master Distribution Trust or the NOAT if the SOAF had
24 not been created and all of the additional settlement funds
25 would be run through the NOAT.

1 As far as the request to me for relief is
2 concerned, the context is quite important. The Court
3 confirmed a Plan that provided for, if you count the \$175
4 million agreement with regard to charitable foundations,
5 \$4.5 billion to be contributed by the Sacklers in settlement
6 of both the estate's fraudulent transfer and other estate
7 claims and third-party claims as set forth in the Plan. My
8 order confirming that Plan was reversed on appeal by the
9 District Court on the basis that the Court did not have the
10 power to grant or impose involuntary third-party releases,
11 including, importantly on the so-called nine, that is the
12 settling states and District of Columbia who took the
13 appeal, but also, realistically on the state of New
14 Hampshire which objected to confirmation on that ground.
15 That ruling by the District Court is currently on an
16 expedited appeal process to the Second Circuit. I am not,
17 therefore, being asked now to amend or modify that Plan
18 under Section 1127 of the Bankruptcy Code. The order
19 confirming that Plan was vacated. I don't believe I could
20 be asked to amend or modify that Plan in any event given the
21 divestiture doctrine as set forth in, for example, In re
22 Sabine Oil & Gas Corp. 548 B.R. 674, 679 (Bankr. S.D.N.Y.
23 2016), and In re Prudential Lines, Inc. 170 B.R. 222, 243
24 (S.D.N.Y. 1994), and the cases cited therein, since it would
25 clearly overlap such a motion with a pending appeal of the

1 same Plan except for the amendment.

2 On the other hand, I'm being asked, instead, to
3 approve the settlement agreement, which in almost all
4 respects except those that I'll list, is conditioned or
5 contingent upon a ruling by the Second Circuit upholding
6 this Court's Confirmation Order and the underlying principle
7 that, under certain limited and constrained circumstances,
8 including as set forth in the Court's decision, the
9 Bankruptcy Court does have the power under the Bankruptcy
10 Code to impose under a plan a release of third-party claims.
11 It is also, since it contemplates, ultimately, modification
12 of the Plan in material ways, contingent and conditioned
13 upon such a motion for modification being granted in the
14 future. The settlement motion before me, the term sheet
15 motion, doesn't seek that relief. It seeks approval of the
16 term sheet, which is ultimately conditioned on obtaining
17 such relief.

18 What would become effective upon the Court's
19 approval of the motion is the following: the parties to the
20 agreement -- that is, the Sacklers and the nine states and
21 the District of Columbia -- would be bound by the terms of
22 the agreement and its conditions; the nine would withdraw
23 their appeals as set forth on the terms of the settlement
24 agreement and not file their briefs, which are due on
25 Friday; the Debtors and the parties to the agreement would

1 be authorized to work on the documentation, including in
2 respect of the SOAF and other relatively modest amendments
3 to the Plan contemplated by the Agreement, again, subject to
4 the conditions that I've already set forth, but that work
5 could begin; and the Debtors would be authorized and
6 directed to pay the attorneys' fees, as I previously noted,
7 of the settling parties back in the fashion set forth in the
8 agreement.

9 The agreement also seeks entry of an order that
10 states, in addition to approving the agreement, subject to
11 its conditions and terms, that the settlement agreement does
12 not contravene any provision of the Bankruptcy Code and that
13 the actions taken by the members of the Sackler families and
14 the nine or the related parties in accordance with the term
15 sheet are taken in connection with the Chapter 11 cases for
16 purposes of Section 10.7 of the Plan, which is including the
17 third-party release provisions. The Debtors also requested
18 that in addition to that provision, they would also state
19 that such Agreement does not contravene any prior order of
20 the Court in these cases. Given that the Court has entered
21 a great number of orders on these cases, I was concerned by
22 that provision, but the Debtors have highlighted, and I
23 think this is something that I did consider, because I did
24 not want to be directing any, or approving any, immediate
25 relief that would not be conditioned upon the Second

1 Circuit's ruling or Plan confirmation, that the agreement,
2 settlement agreement, that is, does not violate the
3 preliminary injunction that's in effect in this case, and I
4 believe as I stated during oral argument that given the
5 conditions of the settlement agreement and the nature of
6 that preliminary injunction and my prior ruling in respect
7 of the Sackler/DOJ settlement, that in fact the settlement
8 agreement does not contravene the preliminary injunction.

9 The focus, as I stated, has primarily been by the
10 objectors on the provision in the settlement term sheet for
11 the separate distribution of approximately \$276 million of
12 the billion to billion and a half dollars to the SOAF or
13 Supplemental Opioid Abatement Fund. It's understandable
14 that those objections would be raised given the clear record
15 in this case that all of the states and governmental
16 entities, non-federal governmental entities that had
17 previously agreed the allocation of the Sacklers settlement
18 money that would be going, generally, to their class, which
19 is class 4, with a three percent spillover from that class
20 to class 5, the Native-American Tribes Class, on an agreed
21 formula. The SOAF provision of the settlement agreement
22 would vary that formula, and no-one likes prior agreements
23 being varied in that manner. The question for me, however,
24 is, as a settlement in this context, which again is not a
25 context seeking modification of a Plan, but merely a

1 settlement condition knowing the conditions I've outlined,
2 with the immediate effectiveness that I've also outlined,
3 invalidate or require me to deny the motion?

4 Those objecting on the basis of the SOAF have
5 raised a number of grounds, asserting that that result
6 should occur. The first is a jurisdictional one, again
7 asserting the so-called divestiture doctrine under the
8 caselaw that I've cited. However, the courts have
9 recognized a distinction in the divestment of jurisdiction
10 when the matter is on appeal and arguably is nevertheless
11 being requested to be heard by the lower court between acts
12 undertaken to enforce the judgment and acts which expand
13 upon or alter it or actions which are simply not before the
14 appellate court. Especially in bankruptcy cases, that
15 distinction is important because there are various aspects
16 of bankruptcy cases that tangentially pertain to matters
17 that may be on appeal but that frankly are quite different
18 and/or may be conditioned on, as here, on the results of
19 such an appeal, as discussed by the Court in *In re*
20 *Prudential Lines*.

21 I conclude that this motion falls into that latter
22 category and not into the category of issues where the
23 divestiture doctrine would divest the Court of jurisdiction.
24 I will note further that Bankruptcy Rule 8008 gives the
25 Court three options where the divestiture doctrine would

1 apply. In Bankruptcy Rule 8008(a), the Court can (1) defer
2 its ruling until the appellate court rules, it can (2) deny
3 the ruling -- I'm sorry, deny the motion, including on
4 jurisdictional bases, or (3) the Court can state that the
5 Court could grant the motion if the Court where the appeal
6 is pending remanded for that purpose, or state that the
7 motion raises a substantial legal issue. So, the
8 divestiture doctrine in an important respect really doesn't
9 wholly divest the Court of jurisdiction since the Court can
10 give an indicative ruling in any event. But as I've noted,
11 I believe that the doctrine does not apply to this motion,
12 but, rather, to the parties' efforts to resolve these cases
13 promptly. And understandably they want to resolve them
14 promptly given the desire of, I believe, every single party
15 in these cases to distribute funds promptly to individual
16 claimants and to abate the opioid crisis, including
17 providing support and services for survivors, victims and
18 their families. And, again, providing for advanced
19 contingent planning, including with a materially enhanced
20 distribution, is not the same thing as this Court treading
21 on the toes of the appellate court by ruling on issues that
22 are before it.

23 I am not being asked here, in any way, to rule on
24 the merits of the third-party release issue which is before
25 the Third Circuit -- I'm sorry, before the Second Circuit,

1 excuse me. So, I conclude that the divestiture doctrine
2 does not apply. I also conclude, and it's really a no-
3 brainer, that I have jurisdiction over this motion, which
4 would, if the conditions to it -- to the settlement
5 agreement -- are fulfilled, would enhance distributions to
6 creditors in these cases by between a little under \$900
7 million and a little under a billion point 4 hundred million
8 dollars. It's frankly laughable that anyone would suggest
9 that the Court doesn't have jurisdiction over something like
10 that where the parties to the agreement have asked for a
11 ruling which seeks authority for them to do the immediate
12 things that the agreement provides for and locks them into
13 the -- locks them in, but not the estate generally, into the
14 other aspects of the agreement in the event the conditions
15 to those performance obligations occur.

16 This is clearly also not a request for an advisory
17 opinion, given that I'm being asked to approve an agreement
18 that has consequences now as I've already set forth. The
19 settling states and the District of Columbia would withdraw
20 their appeals and not file their appellate briefs, the Court
21 would authorize the Debtors to pay their reasonable
22 attorneys' fees and authorize the Debtors to work on the
23 definitive documentation for the somewhat revised Plan,
24 which would require the occurrence of, going forward, legal
25 expenses, obviously, to be ready in case the conditions to

1 the major parts of the agreement are actually fulfilled. In
2 that sense, this motion is little different than a motion to
3 approve a plan support agreement, which the courts in this
4 district and elsewhere routinely approve if they represent a
5 reasonable settlement and use of the debtor's funds and/or
6 are appropriately conditioned, as this one is, on, in the
7 case of plan support agreements, confirmation of a plan and
8 approval of a disclosure statement and voting, and in terms
9 of this agreement action by the Second Circuit on the appeal
10 and a motion to modify the Plan to be consistent with the
11 settlement agreement.

12 I would not approve a settlement agreement or a
13 plan modification agreement if it contemplated a condition
14 that I believed simply was contrary to applicable law. I do
15 not believe, however, that such a problem exists here that
16 would defeat this motion.

17 It is argued that the settlement agreement would
18 violate section 1127 of the Bankruptcy Code, which
19 incorporates or requires compliance with, among other
20 sections of the Code, section 1123 of the Bankruptcy Code,
21 when one seeks to modify a plan. Section 1123(a)(4) states,
22 "Notwithstanding any otherwise applicable non-bankruptcy
23 law, a plan shall provide the same treatment for each claim
24 or interest of a particular class unless the holder of a
25 particular claim or interest agrees to a less favorable

1 treatment of such particular claim or interest."

2 The objectors primarily rest their objections on
3 the contention that this provision would necessarily be
4 violated as a consequence of what is ultimately contemplated
5 by the motion before me in the settlement term sheet,
6 although they understand, and I made it clear to them, that
7 I am not specifically determining that issue in the context
8 of a motion to modify the plan under section 1127 of the
9 Bankruptcy Code.

10 I've considered that argument carefully, and I
11 separated it from the different argument, which is, I
12 believe, ultimately not a legal argument but an argument
13 that is more applicable outside of this bankruptcy case, as
14 well as one that reflects a change in approach by the nine
15 states and District of Columbia from what they had
16 previously adopted in the case as far as allocations of
17 distributions to the nonfederal government entities classes.

18 First, section 1123(a)(4) does not apply except in
19 the context of a motion for modification of a plan. It
20 doesn't apply to a motion to approve a settlement agreement
21 like this. Nevertheless, as I've said, and will say now
22 more colloquially, if I believe that the settlement
23 agreement was leading to a plan that couldn't be confirmed
24 or was a pig in a poke, I would not approve the agreement.
25 It's also the case that while Section 1123(a)(4) by its

1 terms doesn't apply to settlements, the equality of
2 distribution policy of the Bankruptcy Code is a strong one,
3 just as is the absolute priority policy of the Bankruptcy
4 Code, and, therefore, in approving the settlement, I believe
5 a court should consider whether the settlement does real
6 injury to that policy. See *Energy Future Holdings Corp. v.*
7 *Delaware Trust Company*, 648 Fed. Appx. 277, 283 (3d Circuit
8 May 4, 2016), cert. denied, 137 S. Ct. 447 (2006), and by
9 analogy, *In re Iridium Operating Company*, which dealt with
10 the role of the absolute priority rule in considering a
11 settlement. 478 F.3d 452, 466 (2d Cir. 2007).

12 First, and most importantly, however, the
13 provision itself contemplates that the same treatment
14 requirement can be modified on consent, i.e., it says
15 "unless the holder of a particular claim or interest agrees
16 to a list favorable treatment of such particular claim or
17 interest." It's hard to imagine, although possible, but not
18 by any means a certainty, that the objectors would
19 ultimately turn down the prompt confirmation of a plan that
20 would add an additional roughly 900 million to \$1.4 billion
21 of value to be distributed pro rata to their class and would
22 instead take the plan that they had previously agreed to,
23 which would provide for that much less distribution pro rata
24 to their class. But in any event, that is an issue for
25 another day and this motion does not contravene the Code in

1 leaving it for another day.

2 In addition to that, the case law construing
3 section 1123(a)(4) has made an important distinction most of
4 the time between payments that are made from the estate or
5 by the estate of property of the estate as defined in
6 section 101 of the Bankruptcy Code and, on the other hand,
7 property that is paid unequally to certain members of the
8 class not from property of the estate but rather by third
9 parties. See, for example *In re ICL Holding Company Inc.*,
10 802 F.3d 547, 555-56 (3d Cir. 2015) and *In re Source*
11 *Enterprises Inc.*, 392 B.R. 541 (S.D.N.Y. 2008), the
12 discussion there beginning at page 556 and going through 557
13 by District Judge Stein.

14 Two cases I think highlight this distinction,
15 first *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973
16 (2006), where clearly Justice Breyer's opinion refers to the
17 distribution of estate assets and the court not being
18 permitted to vary as part of the settlement, in that case a
19 settlement as part of a dismissal-of-the-case order that
20 would vary the absolute priority rule. A similar result and
21 a similar distinction between estate property and non-estate
22 property can be found in *In re DBSD North America Inc.*, 634
23 F.3d. 78, 98 (2d Cir. 2011).

24 Courts that have more closely looked at the
25 1123(a)(4) issue in a plan context have also reached this

1 result, most recently in *In re Mallinckrodt, PLC*, 2022
2 Bankr. LEXIS 273, at pages 26 through 30 (Bankr. D. Del.
3 February 3, 2022), where it noted that the settlement money
4 that was being paid to those settling within the class was
5 being paid by third parties, insurers of the third parties,
6 rather, and therefore, would not implicate the 1123(a)(4)
7 provision.

8 Courts have noted some uncertainty in the case law
9 as to that meaning of 1123(a)(4). The plain terms are,
10 again, that a plan must provide the same treatment for each
11 claim or interest of a particular class, again with the
12 proviso that the claimant can vary that requirement. But as
13 discussed by Judge Scheindlin in *ACC Bondholders Group v.*
14 *Adelphia Communications Corp.* (*In re Adelphia Communications*
15 *Corp.*), 361 B.R. 337 (S.D.N.Y. 2007), there is at least a
16 question, at least there was then in the District Court's
17 mind in 2007 when considering whether it should enter an
18 order staying the effective date of the plan in Adelphia
19 pending appeal, as to whether that provision applies to the
20 treatment of claims as the plain language states or of
21 claimants which, if it were "claimants" would include not
22 only money received by the estate but on account of non-
23 estate money as well. Again, that second interpretation is
24 contrary to the plain terms of the statute, which refers to
25 a class of claims or interests.

1 I guess a couple of other remarks are worth
2 making. The courts have long recognized that 1123(a)(4) is
3 not violated if someone is getting different treatment not
4 on account of its claim but for some other distinct purpose,
5 such as, in In re Peabody Energy Company, agreeing to
6 subscribe to a rights offering. 923 F.3d, 918, 925 (8th Cir.
7 2019). Finally, courts have also long recognized that if
8 some parties take a settlement and others don't, but they
9 each have the opportunity to do so, those that take the
10 settlement or those that don't are not getting disparate
11 treatment in violation of section 1123(a)(4). That
12 includes, for example as set forth in the Energy Future
13 case, a settlement from the debtor's estate. Here, the
14 settlement would be from -- the Debtors have argued and I
15 think pretty convincingly, although the issue is not
16 definitively before me -- that the settlement is coming from
17 non-estate funds for a non-estate claim, i.e. the claim that
18 is the subject of the appeal before the Second Circuit which
19 would be withdrawn upon my approval of this motion, namely
20 that the Court does not have the power to force a third-
21 party release on appellants -- I'm sorry, the appellees,
22 excuse me. However, now they are agreeing to accept this
23 payment in addition to directing the remaining amounts or
24 agreeing that the remaining amounts would go into the estate
25 as set forth in the settlement term sheet.

1 I think it could well be argued that all of those
2 who supported the Plan, starting with the Debtors in respect
3 to their own estate claims and those who did not object to
4 the Plan, did not appeal the plan, and/or support the plan
5 had previously settled their third-party claims under the
6 Plan. They had the opportunity not to do so, to take the
7 risk that the settling parties took that they would get
8 nothing by defeating the Plan. They decided not to take
9 that risk, which clearly the vast majority of parties in
10 interest agreed was too great a risk; but it is hard for me
11 to see that they should be able to complain now under the
12 foregoing case law that those who did take that risk and are
13 not reducing the recovery from the estate to anyone -- in
14 fact are agreeing that well over 70 percent of the added
15 recoveries would go to the estate -- should be denied under
16 1123(a)(4) the additional percentage they would be getting
17 under the SOAF.

18 So, for those reasons I do not believe that the
19 settlement agreement and the relief sought in this motion
20 contravene the Bankruptcy Code.

21 I also believe that the settlement agreement is
22 not a sub rosa plan, that is, a plan -- that is, an
23 agreement that dictates by its terms the terms of a plan
24 without following the requirements of plan confirmation. By
25 its terms, except for the limited performance obligations

1 that I've already outlined, the plan -- the settlement
2 agreement is, in fact, or does, in fact, require
3 modification of the plan in compliance with 1129 -- I'm
4 sorry, section 1127 for a modification as well as, of
5 course, a favorable ruling by the Second Circuit. It
6 therefore complies as a building block for a plan like an
7 acceptable plan support agreement rather than being a
8 disguised or a sub rosa plan. It is in fact the contingency
9 to the agreement that actually keeps it from being a sub
10 rosa plan and instead being simply an important, in fact
11 remarkable, building block for a plan. See *In re Tower Auto*
12 *Inc.*, 342 B.R. 158, 163 (Bankr. S.D.N.Y. 2006).

13 Certain objectors have objected to the payment of
14 professional fees, which is one of the immediate effects of
15 my granting the motion, along the lines that I've already
16 described. I note, as have the objectors, that the motion
17 does not seek approval of the payment under section
18 503(b)(3) or (b)(4) of the Bankruptcy Code, by the so-called
19 substantial contribution provision of the Code, and have
20 contended that's the only provision under which these fees
21 can be paid. I have already ruled on this issue not only in
22 the confirmation opinion but also earlier in the case in
23 authorizing the fees for key ad hoc committees.

24 I do not believe the Code section itself limits
25 the power under section 363(b) to seek payment of such fees

1 under appropriate circumstances. The case cited for that
2 proposition is a much more narrow holding, I believe, the
3 Lehman Brothers case, which dealt with payment of committee
4 expenses which were specifically dealt with as not being
5 authorized by the statutory provision.

6 It seems to me that there is important work to be
7 done on the documentation of the SOAF, as discussed on the
8 record and more flesh to be put on the bones of the
9 commitment, which is a critical one, by the settling states
10 and the District of Columbia that the funds for the SOAF
11 will be used for opioid abatement and victim purposes. And
12 that is the type of work that the courts have recognized is
13 warranted for payment under section 363(b), including in the
14 Bethlehem Steel case that both sides discussed.

15 Moreover, given the extraordinary result obtained
16 here in light of the leverage obtained by the nine then
17 appellants, now appellees, in respect of the Plan, it's
18 almost impossible for me to conceive that they would not be
19 entitled to a substantial contribution award for those
20 services, which would obviously precede the services that
21 I've just described for the documentation and the like. The
22 enhancement of the estate by somewhere between roughly \$900
23 million and \$1.4 billion is an extraordinary enhancement of
24 value for all stakeholders and clearly fits within the case
25 law that would award a substantial contribution award for

1 that. See *In re McLean Industries, Inc.*, 88 B.R. 36, 38-39
2 (Bankr. S.D.N.Y. 1988).

3 I would also note that the amounts that we are
4 talking about here are minuscule in relation to the benefit
5 to the estate resulting from the funds that are coming into
6 the estate or would come into the estate if the conditions
7 to the settlement agreement were fulfilled, namely somewhere
8 between roughly 2-1/2 million incurred and the estimated
9 additional 2 to 2-1/2 million that may be incurred going
10 forward.

11 I believe that those objections that dealt with or
12 sought clarification of the term sheet, particularly the one
13 by the Canadian municipalities and First Nations, have been
14 appropriately dealt with.

15 I will turn then to the objections by others,
16 either pro se individuals or in two cases, people who were
17 represented by counsel. To the extent that those objections
18 raised the 1123(a)(4) issue, those objections to the extent
19 that those objectors were not in Classes 4 or 5, would not
20 have standing to make such an objection because they would
21 not be affected in the class to which the 1123(a)(4) issue
22 would apply. See *1199 SEIU National Benefit Fund v. Akorn*
23 *Inc. (In re Akorn, Inc.)*, 2021 U.S. Dist. LEXIS 180788, at
24 page 33 (D. Del. September 22, 2021). See generally *Kane v.*
25 *Johns-Manville Corp.*, 843 F.2d 636, 643 (2d Cir. 1988). See

1 also 7 Collier on Bankruptcy, Paragraph 1123.01[4][b].

2 Certain of objectors also contend that this extra
3 money negotiated by the states and the District of Columbia
4 should not be going to Class 4 and 5 through the NOAT or to
5 the nine states and the District of Columbia through the
6 SOAF, but, rather, at least some portion or all of it,
7 depending on the objection, should go to individuals who
8 have personal injury claims, under the Plan. The case law
9 is quite clear that if and when one gets to a hearing on a
10 modification of the Plan under section 1127 of the
11 Bankruptcy Code, those who are not materially and adversely
12 affected by a plan modification did not have the right to
13 vote on that modification or object to it because their
14 treatment is not changed for the worse.

15 It was quite important to me from the start of the
16 mediation that the nine, so-called, would not take value
17 from the estate that had been allocated to other parties
18 including, specifically, personal injury claimants. The
19 record is clear from today that they are not taking value
20 for personal injury claimants and that the personal injury
21 claimants' distributions under the Plan that had been
22 confirmed would not change as a result of this settlement if
23 the conditions to the effectiveness of the settlement,
24 namely affirmance by the Second Circuit and confirmation of
25 a modified Plan, would occur. Therefore, I believe that the

1 settlement does not contravene any rights that those parties
2 would have to the distributions they would be getting under
3 the Plan, that the Second Circuit would uphold as a
4 condition, of course, to this settlement, and are no worse
5 off.

6 Indeed, given the use of the funds for abatement,
7 including for victims and their families, and the multiplier
8 effect that I previously found of the use of such funds, one
9 would argue that although the funds would not be distributed
10 necessarily directly to victims as part of a claim process,
11 there would be an enhanced benefit to the victims from such
12 additional monies being dedicated to services.

13 And again, an important agreement by the settling
14 states and the District of Columbia, which they did not have
15 to agree to and is not any requirement of the Bankruptcy
16 Code, is that they would use the money, the SOAF money for
17 abatement and treatment purposes as I previously quoted,
18 which is an extremely important and I think original
19 commitment in these cases starting with the very beginning
20 of these cases and already embodied in the NOAT and the
21 principles of the plan.

22 So, I conclude that as a settlement the settlement
23 satisfies the factors laid out by the Second Circuit in In
24 re Iridium Operating, LLC, 478 F.3d. at page 465, and, in
25 fact, those factors have really not been challenged, i.e.

1 the assessment of the merits, and that's I think explicable.
2 The Debtor is not giving up anything more as a result of the
3 settlement. It is getting, instead, substantial monetary
4 value and nonmonetary value in agreements from the Sacklers.
5 And this settlement is in compliance with applicable law
6 which is the one Iridium factor that has been focused on as
7 opposed to the others dealing with the balance of the
8 litigation's possibility of success, future benefits of the
9 settlement, the likelihood of protracted litigation, expense
10 and inconvenience of delay, the paramount interest of
11 creditors, whether other parties in interest support the
12 settlement, the competence and experience of counsel
13 supporting the settlement, etc., and whether the settlement
14 is the product of arms-length bargaining, are all satisfied
15 here.

16 And I will reiterate that it is clear to me from
17 reading every Mediator's Report on this mediation, as well
18 as the reports on the prior mediation that she conducted,
19 these were some of the most difficult arms-length
20 negotiations any mediator has ever conducted. So, those
21 factors are all satisfied.

22 The settlement's compliance with either the Code
23 itself or underlying principles of the Bankruptcy Code,
24 namely the principle of equality of distribution I have
25 already addressed. So, it appears to me that under the

1 Second Circuit law as enunciated by the court in Iridium,
2 the settlement should be approved.

3 There is certainly a proper business justification
4 for locking in these parties, including the Sacklers, to the
5 terms of the settlement subject to its conditions and for
6 the Debtor to take the relatively modest steps for which
7 they are seeking authorization now to enable the next step
8 if the Second Circuit fulfills the condition of this
9 settlement and proposes and seeks approval of the
10 modification of the plan consistent with the settlement.

11 So Mr. Huebner, you can submit the order. I think
12 the one change would be the reference to "consistent with
13 all the orders I have entered in the case." You can change
14 that to the plan -- "the preliminary injunction order."

15 MR. HUEBNER: Your Honor, thank you very much.
16 Two very small things from this end. One, only because I
17 think the transcript is going to constitute the Court's
18 ruling, with huge apologies, I believe the Court made
19 multiple references to 1123(a)(4) when you meant 1123(a)(4).

20 THE COURT: Yes, yes.

21 MR. HUEBNER: And just so that the record is
22 clear, I assume that is what the Court intended?

23 THE COURT: Of course, you're right. Thank you
24 for catching that. I will read the transcript. I will
25 correct typos or sics and things like that in it, but you

1 are absolutely right. Those references were to 1123(a)(4),
2 as incorporated by 1127.

3 MR. HUEBNER: The second thing, Your Honor, there
4 actually is a mistake in the order that I want to call to
5 the Court's attention and ask for permission to change which
6 is the term sheet with respect to the payment of the fees,
7 the term sheet requires, in the section called "Additional
8 Terms," that we move promptly to get the payments of the
9 legal fees authorized subject to the procedures. Paragraph
10 4 of the order contains an additional clause that says "upon
11 consummation of the plan as enhanced by the term sheet,"
12 that's actually not the business deal.

13 THE COURT: Right.

14 MR. HUEBNER: That's just a mistake in the order.

15 THE COURT: You're right. And I didn't, I assumed
16 that the business deal, as I stated during my ruling, was
17 that aspect of the term sheet would become operative.

18 MR. HUEBNER: Correct. So we'll delete. It goes
19 without saying we have been working very, very quickly here
20 on many fronts. We would like to thank, obviously, the
21 Court, the mediator and frankly all the objectors. I will
22 say it one last time, we much more than understand where
23 many people are coming from and this is hard, but it is in
24 the estate's best interest.

25 We are back on tomorrow morning at 10 a.m. for an

1 equally, and maybe even more important, time before Your
2 Honor when the victims will have their opportunity, as
3 shepherded by the UCC, to have their voices heard.

4 THE COURT: Right. And I would say as far as
5 tomorrow is concerned that I gladly took up Judge Chapman's
6 recommendation in her last Mediation Report to hear victims
7 with Sackler family members present. I also agreed with her
8 that those should be the victims' statements. No one should
9 be commenting on them. Therefore, the people who are harmed
10 by OxyContin are to speak and I don't expect comments from
11 anyone.

12 I also want to reiterate that these are statements
13 in federal court, and because of health concerns, we're
14 doing it remotely. I wish we could do it in person but I
15 have a small courtroom and it just wouldn't work, but we
16 will be on Zoom. But, we will still be in a federal court,
17 and I expect people -- and I don't doubt that this will be
18 the case -- to act as one would act in a federal court.
19 Obviously these are very serious statements, and I wouldn't
20 expect anything less than that in light of that and the
21 courage with which people are speaking.

22 It goes without saying, and yet I will say it
23 because it's important, that people are not allowed to
24 photograph what goes on in federal court. You are not
25 allowed to tape what's going on in federal court or live

1 stream what's going on in federal court. There are
2 important security reasons for that, including cybersecurity
3 reasons. It is something that would subject anyone who
4 would do those sorts of things to serious liability.

5 So this is, I hope you'll understand this, one-on-
6 one communication and it's important one-on-one
7 communication. So I look forward to it tomorrow.

8 (Whereupon these proceedings were concluded at
9 5:25 P.M.)

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I N D E X

RULINGS

Page Line

Motion to Shorten Granted 25 3

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: March 18, 2022

[& - 276]

Page 1

&	5:21 6:3,10,13,21	145:18 152:18	150:2 161:9
& 8:2 15:10,20	7:2,5,12,15 8:6,9	153:8 159:4	2-1/2 161:8,9
16:1,15 23:21	8:16,19 9:2,5,12	162:10 166:2	2.5 36:5 46:11
82:18 111:2	9:15,22,25 10:7	1129 159:3	143:10,12
145:22	10:10,17,22,25	11501 170:23	20 52:24 54:2,2,3
0	11:7,10,17,20	1199 117:6 161:22	74:13 84:4 90:7
01 17:5	12:2,5 23:12	11:00 102:12	119:12 134:8
07102 15:14	141:3,23	12 100:23 122:1	20005 16:18
1	10601 1:14	12.6 76:12	2006 154:8 155:16
1 14:14 16:17	108 117:9	1201 15:13	159:12
49:25 73:7 93:25	11 1:5 3:4,10,15	12151 170:7	2007 154:11
103:8 104:17	3:19,25 4:4,21 5:7	12th 38:21 50:10	156:15,17
117:11 132:1,15	5:11,17,21 6:3,9	13.4 133:24	2008 42:13 155:11
150:1	6:13,21 7:1,5,11	13.4. 134:12	201 14:21
1,000 25:10 26:4	7:15 8:5,9,15,19	1300 16:10	2011 155:23
26:14	9:1,5,11,15,21,25	137 154:8 155:15	2015 42:12 155:10
1.175 41:12 46:17	10:6,10,17,21,25	14 135:18 144:20	2016 145:23 154:8
1.3 128:21	11:6,10,16,20	147 1:13	2019 157:7
1.39 38:25	12:1,5 23:12	15 30:20 77:21	2020 129:21
1.398 30:2 41:13	31:21 65:21	84:4 103:3	2021 117:8,10
42:5 74:21 77:13	100:16,23 131:8	158 159:12	161:23,24
78:22 125:11	131:17 132:7,9	163 159:12	2022 1:16 2:1
1.4 80:25 121:22	141:17 142:3	17 100:23	71:15 156:1,3
125:19 154:20	147:15	170 145:23	170:25
160:23	1100 16:17	175 30:21 50:3	22 117:9 131:12
1.675 41:12 46:17	1123 40:5,9 41:4	142:19,22 145:3	161:24
10 2:1 73:8 166:25	41:14 42:12,18	18 36:22 73:8	220 51:16
10.7 35:12 107:17	43:4 64:21 65:4	100:16,23 129:20	222 145:23
147:16	68:7,10 69:15	170:25	225 129:19 134:11
10.7. 41:17	71:24 72:14,16	180788 117:9	225.3 134:5
100 37:11 81:15	77:1 96:15,20	161:23	2400 15:4
114:18	152:20,21 153:18	19-23649 1:6	243 145:23
100,000 114:11	153:25 155:3,25	1901 15:5	25 15:21 90:7
10001 16:4	156:6,9 157:2,11	1988 78:4 117:5	96:21 119:12
10005 17:13	158:16 161:18,21	161:2,25	134:8 169:6
10014 14:22	165:19,19 166:1	1994 145:24	25-30 134:1
10017 14:6	1123.01 117:11	1:00 27:21	26 156:2
10036 14:15	162:1	1:05 1:17	27 73:6 144:20
1006 14:21	1127 80:11,19	1pm 2:2	27.7 134:1
101 155:6	81:9,18 96:15	2	27.7. 134:15
105 3:4,10,16,19	104:25 118:6	2 16:10 17:12	273 156:2
4:1,4,21 5:8,11,18	119:5 124:14,17	83:23 84:1 132:5	276 148:11
	124:25 125:7	132:14 136:18	

[276,888,000.87 - 6.5]

Page 2

276,888,000.87 143:23	5:21 6:3,10,13,21 7:2,5,12,15 8:6,9	41 74:11	447 154:8
277 36:21 38:12 38:23 39:1 48:24 69:2 77:15 87:16 87:20 93:6,19 103:14,15 104:3 112:21 116:3 122:18,20 123:4 126:4 129:1 131:13,16,22 132:20 133:20 134:3,5,13 144:6 154:7	8:16,19 9:2,5,12 9:15,22,25 10:7 10:10,17,22,25 11:7,10,17,20 12:2,5 23:12 46:3 77:7,11 78:1 110:13 141:2,23 159:25 160:13	4410 2:4,10,15,21 2:25 3:6,12,17,21 4:2,6,12,16,23 5:3 5:9,13,19,23 6:5 6:11,15 7:3,7,13 7:17,23 8:1,7,11 8:17,21 9:3,7,13 9:17,23 10:2,8,12 10:19,23 11:2,8 11:12,18,22 12:3 12:7,20 13:1	4470 5:15 4471 5:5 4472 4:24 4473 4:17 4474 4:13 4478 4:8 4480 3:23 4483 3:1 4484 2:22 4485 2:16 4486 2:12 4487 2:7 450 14:5 452 154:11 465 163:24 466 154:11 478 154:11 163:24
283 154:7 29 28:23 2:00 27:20 2d 117:5 154:11 155:23 161:25	38 65:23 38-39 78:4 161:1 39 43:20 392 155:11 3:00 27:20 3d 154:7 155:10	4410,4413 12:15 4411 2:5 3:13 4413 3:21 4:6,23 5:13,23 6:15,23 7:7,17 8:11,21 9:7 9:17 10:2,12 11:2 11:12,22 12:7,20 13:4	5
3	4		
3 35:16 40:5,9 76:9 114:13 122:6 129:2 150:4 156:3 159:18 169:6 3/4/2022 13:3 30 62:7,13 134:2 156:2 300 1:12 83:18 170:22 31401 15:22 32 65:23 32399 17:6 33 117:9 161:24 330 170:21 337 156:15 342 159:12 35 24:3,18 28:4 33:21 40:6 114:11 35203 15:6 36 78:4 161:1 361 156:15 363 3:4,10,16,19 4:1,4,21 5:8,11,18	4 39:12 41:4,7,14 41:14,25 42:3,12 42:18 43:4 63:20 64:21 65:4 68:7 68:10 69:3,15 71:24 72:14,16 77:1 96:15,20 116:3 117:11 119:2 122:8 129:2 148:19 151:7 152:21 153:18,25 154:8 155:3,25 156:6,9 157:2,11 158:16 159:18 161:18,19,21 162:1,4 165:19,19 166:1,10 4.3 112:5 4.325 32:5 122:11 122:24 4.325. 123:3 4.5 71:20 74:20 87:23 88:2,3,18 109:5 145:5 40 126:4,5	4417 12:22 4418 12:15 4433 12:9 4435 11:24 4437 11:14 4440 11:4 4441 10:19 4443 10:14 4445 10:4 4447 9:19 4449 9:9 4451 8:23 4453 8:13 4455 8:3 4456 7:23 4458 7:19 4461 7:9 4462 6:24 4464 6:17 4465 6:7 4466 2:2 4468 5:25	5 39:24 41:7 42:4 148:20 161:19 162:4 5,000 34:15 5.5 132:22 50 83:23 144:22 500 112:2 503 78:2,24 79:3,6 159:18 52 134:3 541 122:6,8 129:2 155:11 547 155:10 548 145:22 55 16:3 555-56 155:10 556 155:12 557 155:12 570 15:13 5:25 168:9
			6
			6 88:19 132:22 6.5 109:7

60 8:2 15:20	918 157:6	accelerating	actively 91:7
60602 16:11	923 157:6	101:7	actors 59:5
618,000 29:4	925 157:6	acceleration	acts 149:11,12
83:25	973 155:15	55:22 100:22,25	actual 29:17
633 71:15	98 155:23	accept 122:24,24	39:14 42:7,16,17
634 155:22	a	157:22	50:4 52:6 63:12
636 117:4 161:25	a.m. 102:12	acceptable 159:7	64:15 107:3 110:4
643 161:25	166:25	access 23:5	ad 5:1,4 16:9 47:4
648 154:7	aac 77:6	accommodations	47:5 58:9 89:21
654 117:5	aaron 12:20 17:15	59:15,16	90:18 91:2,6,11
674 145:22	82:11,17	accomplish 59:9	94:2,7,14,18
679 145:22	abate 109:15	accomplished	159:23
69 114:12	150:16	49:20 84:1 94:13	add 89:18 118:7
7	abatement 30:4	accomplishment	125:10 139:9
7 117:10 162:1	36:22,24 37:2	49:18	142:11 154:20
70 90:8 158:14	38:24 46:18 50:1	accorded 120:17	added 119:9
700 56:21	50:6 51:18 52:16	account 39:19	158:14
723 112:1	53:22 59:17 60:3	84:22 85:24	adding 80:25
75 77:17 90:8	60:8,14,25 61:10	118:17 134:8	addition 38:22
78 155:23	63:21 85:16,20	144:21 156:22	98:1 105:6,15
8	87:16 92:8 98:2,5	157:4	117:22 141:18
80 68:25 93:16	102:5 119:14,17	accurate 136:10	142:4 147:10,18
800 49:19	126:14 142:22	170:4	155:2 157:23
8008 149:24 150:1	144:2,5,8 148:13	accusation 40:25	additional 39:24
802 155:10	160:11 163:6,17	achieve 37:7	40:16 50:17 54:23
83 80:17	abide 109:20	118:3	59:2 76:5 86:23
843 117:4 161:25	ability 24:2 49:8	achievement	102:15 109:15
85 93:16	50:12 73:9 84:8	92:15	112:1,2 118:16
88 161:1	86:12 124:7	acknowledge	143:21 144:24
888 78:4	142:16,18	90:18 118:1	154:20 158:16
898 30:2 38:25	able 38:16 67:14	acknowledged	161:9 163:12
41:12 42:5 74:21	67:24 92:23	86:2	166:7,10
77:13 78:22	158:11	act 79:15 167:18	address 23:13
125:11	abrams 17:18	167:18	46:22 50:21 83:1
8th 157:6	absence 81:18	acting 6:6 109:12	97:8 125:12
9	absolute 154:3,10	action 45:6 96:5,7	135:12,14
9 1:16 2:1	155:20	105:11 112:9	addressed 44:2
90 93:16 112:3	absolutely 44:17	152:9	96:16,17 113:12
900 80:25 125:19	166:1	actions 73:6	113:12 129:17
128:20 151:6	abuse 69:10	147:13 149:13	164:25
154:20 160:22	acc 156:13	active 83:7 118:24	addressing
	accelerate 31:22	126:23	114:22 120:2
			125:23

<p>adds 74:21</p> <p>adelphia 156:14 156:14,18</p> <p>adequate 118:14</p> <p>adjudicate 105:11 105:12</p> <p>adjudicated 118:5</p> <p>adjudication 45:16</p> <p>administered 1:7 36:23</p> <p>administrative 139:21,24</p> <p>adopt 62:16</p> <p>adopted 62:19,24 63:5 153:16</p> <p>advance 24:1 75:9 94:11</p> <p>advanced 150:18</p> <p>adverse 119:10</p> <p>adversely 86:14 162:11</p> <p>advisory 45:1,5 151:16</p> <p>advocating 74:15</p> <p>afanador 15:10 111:2</p> <p>affect 143:17</p> <p>affiliates 69:10</p> <p>affirmance 162:24</p> <p>affirmed 63:17 87:22</p> <p>affirms 88:15 125:5</p> <p>afternoon 23:2 47:17 48:6 58:8 89:11 102:11 111:1</p> <p>ag 53:25</p> <p>agenda 2:1 28:4 29:11</p>	<p>ago 38:10 40:11 43:20 49:23 68:21 68:22 108:7 123:14</p> <p>agree 26:24 27:24 50:16,19 53:6 55:5 58:25 67:6 77:17 96:14,15 97:7 101:12 103:12 104:4 122:22 123:11 127:1,7 129:10 137:20 163:15</p> <p>agreed 48:24 54:10,18 55:7 57:21 60:15 61:4 93:6 126:11 127:8 127:10 130:16 135:24 136:21,24 137:22 138:18,20 142:19 148:17,20 154:22 158:10 167:7</p> <p>agreeing 41:23 51:4 98:2 127:12 157:5,22,24 158:14</p> <p>agreement 24:25 32:6 35:5 36:19 39:22 44:9 49:13 50:3,11 56:4,17 61:21 65:19 71:23 76:10 79:9 80:23 88:11 93:12 99:18 100:10 101:10,11 106:12 123:8 130:22,23 132:8 135:5,8,17 136:22 138:25 139:3 142:14 143:2,3,7 143:13,20 144:4 144:12,17,19 145:4 146:3,20,22</p>	<p>146:24,25 147:3,8 147:9,10,11,19 148:1,2,5,8,21 151:5,10,12,14,17 152:1,3,9,11,12 152:13,17 153:20 153:23,24 158:19 158:21,23 159:2,7 159:9 161:7 163:13</p> <p>agreements 29:25 30:19 33:11 34:19 45:14 74:7 104:9 124:1 142:25 148:22 152:7 164:4</p> <p>agrees 64:24 152:25 154:15</p> <p>ags 48:10,18</p> <p>ahc 51:9 54:8 55:1 55:2,13 89:9</p> <p>ahc's 49:11 143:8</p> <p>ahead 58:7,16 62:24 97:2 98:21 110:24</p> <p>ahg 77:20 79:7 82:6</p> <p>aisling 20:19</p> <p>akin 14:11 48:7</p> <p>akorn 117:7,8 161:22,23</p> <p>al 1:6 8:3 15:6,19 15:20 23:3</p> <p>alabama 4:24</p> <p>alabama's 4:19</p> <p>alan 19:2</p> <p>alaska 11:3</p> <p>aleali 18:13</p> <p>alexander 20:7</p> <p>alice 22:2</p> <p>aligned 122:1</p> <p>alleged 33:21</p>	<p>alleges 40:7</p> <p>allen 2:5 15:16 111:1</p> <p>alleviate 37:2</p> <p>alleviated 76:22</p> <p>allocated 66:2 144:22 162:17</p> <p>allocation 40:17 41:6,25 43:9,14 48:24 55:24 57:21 61:13 70:18,25 72:4 86:6,8 90:13 91:17 99:2 123:1 128:22 144:10 148:17</p> <p>allocations 39:11 153:16</p> <p>allow 25:11 26:5 33:20 50:20 80:24 97:16,18,19 124:19 125:16</p> <p>allowed 49:1 123:6 131:16 167:23,25</p> <p>allowing 115:21</p> <p>alter 39:11 149:13</p> <p>alternative 66:8</p> <p>alternatively 76:24</p> <p>amend 39:11 80:13,23,23 145:17,20</p> <p>amended 38:21 44:17 50:10 96:14 96:16 97:21 103:9 104:14</p> <p>amending 71:23</p> <p>amendment 38:18 73:25 76:6 91:25 97:6 124:22 146:1</p> <p>amendments 80:21 124:19 147:2</p>
---	--	--	--

<p>america 64:3 155:22</p> <p>american 3:22 51:22 53:9 57:23 107:4 109:6,8 125:21 128:18,21 148:20</p> <p>americans 63:21</p> <p>amicus 74:15</p> <p>amityville 15:19</p> <p>amount 26:13 42:4 90:20 92:9 100:8 104:5 112:3 115:8 140:10 142:17 144:4</p> <p>amounts 66:2 100:5 144:11 157:23,24 161:3</p> <p>ample 99:9</p> <p>analogous 44:6</p> <p>analogy 154:9</p> <p>anchor 117:2</p> <p>andrew 18:18 22:3</p> <p>angry 70:18 84:24</p> <p>annual 100:6</p> <p>answer 44:22 49:17 52:14 94:5 112:19 113:14 136:15 141:8</p> <p>anti 129:19</p> <p>anybody 85:17 122:17</p> <p>anybody's 85:2 126:7</p> <p>anymore 130:12</p> <p>anyway 51:18 88:25</p> <p>apologies 165:18</p> <p>apologize 26:4 31:1 64:9 86:25</p> <p>apparently 107:20</p>	<p>appeal 31:12 32:16,17 34:21,25 35:5,13 36:14 38:21 44:16 45:10 51:4 61:18 63:14 64:11 65:8 74:24 75:16,18 76:4 77:24 80:12 90:4 92:20 93:7 97:3 97:16 107:17 108:14,17 109:22 115:16 128:17 130:25 131:4 132:12 142:5,9 144:18 145:8,13 145:16,25 149:10 149:17,19 150:5 152:9 156:19 157:18 158:4</p> <p>appealed 37:23 41:25 142:2</p> <p>appealing 27:16 57:7 79:10</p> <p>appeals 25:2 31:14,15,15,17,20 32:21 35:18 38:4 38:5,14 69:12 76:3 102:19 146:23 151:20</p> <p>appear 29:6</p> <p>appeared 86:17</p> <p>appearing 23:6</p> <p>appears 127:16 164:25</p> <p>appellants 31:18 38:3,4 157:21 160:17</p> <p>appellate 32:25 45:9 131:21 149:14 150:2,21 151:20</p> <p>appellees 51:5 157:21 160:17</p>	<p>applaud 54:25 59:9</p> <p>applauded 95:15</p> <p>applicability 127:23</p> <p>applicable 36:2 54:17 103:16 113:1,18 114:3 130:12 152:14,22 153:13 164:5</p> <p>application 111:25</p> <p>applied 94:17 98:3</p> <p>applies 128:16 156:19</p> <p>apply 32:18 72:17 112:8 119:3 150:1 150:11 151:2 153:18,20 154:1 161:22</p> <p>applying 110:3</p> <p>appointed 28:16</p> <p>appreciate 48:10 48:19 51:11 53:15 57:25 69:5 77:25 81:24 88:4,23 89:22 90:5 106:25 114:6 115:21,21 120:15</p> <p>appreciates 89:24 91:2,6,16</p> <p>appreciative 120:13</p> <p>approach 153:14</p> <p>approached 92:2</p> <p>appropriate 24:6 46:4,12 51:13 67:9 95:22 96:18 96:23 97:15 98:19 124:25 130:5 160:1</p>	<p>appropriately 91:14 124:10 152:6 161:14</p> <p>approval 32:10 33:10 34:19 36:1 46:10 60:23 65:15 66:4,13 76:2 108:16 130:22 132:15 146:15,19 152:8 157:19 159:17 165:9</p> <p>approvals 30:16</p> <p>approve 2:9,14,24 3:3 4:15 5:2 7:22 7:25 12:12,18 57:17 61:16 68:12 75:25 84:22 87:13 88:11 105:14 110:13 140:24 146:3 151:17 152:3,4,12 153:20 153:24</p> <p>approved 46:12 49:3 53:13 93:13 99:9 107:14 110:16 115:16 165:2</p> <p>approving 2:20 3:5,11,17,20 4:2,5 4:11,22 5:9,12,19 5:22 6:4,11,14,22 7:3,6,13,16 8:7,10 8:17,20 9:3,6,13 9:16,23 10:1,8,11 10:18,23 11:1,8 11:11,18,21 12:3 12:6 23:11 67:22 68:14 77:19,20 102:14 141:23 147:10,24 154:4</p> <p>approximately 36:21 51:16 148:11</p>
--	--	--	--

<p>appx 154:7 arabic 132:1 ardavan 17:21 arguably 71:11 149:10 argue 45:11 57:22 71:9 74:24 79:3 163:9 argued 152:17 157:14 158:1 argument 32:9 39:6 43:25 46:14 67:12 68:10,16 69:5,17 71:12 75:1,11 77:1,4,11 83:10,12 93:21 102:11 113:2 117:22 122:10,15 134:22 148:4 153:10,11,12,12 arguments 49:15 57:2,19 63:12 76:19,20 77:4 81:2 89:5,6 105:17 110:7 122:2 129:14 arik 14:17 47:18 48:7 arisen 50:9 arises 28:3 arizona 8:12 arkansas 9:18 armor 95:25 arms 164:14,19 arrange 26:4 arrangement 48:14 articulative 120:17 artificial 51:25 aside 51:14 asked 29:18 34:23 51:7 61:16 81:17</p>	<p>103:5 107:13 108:2 109:22 112:20 113:11 140:24 141:3 145:17,20 146:2 150:23 151:10,17 asking 35:2 65:10 68:18 75:9 95:2 109:4,11 110:4 129:11 asks 108:10 aspect 38:6 61:15 62:1 135:10 166:17 aspects 142:23 149:15 151:14 assert 38:16 39:10 45:12 asserting 123:15 149:5,7 assessment 164:1 assets 39:9,17 40:23 42:22,22,23 43:13 69:22,23,23 69:25 83:17 85:14 87:6 93:14,17 111:20 130:16 142:17 155:17 assistance 61:1 associated 69:11 assume 59:25 85:5 89:2 165:22 assumed 166:15 assuming 60:13 61:21 97:4 105:2 assumption 84:18 84:21 85:19 assure 54:24 atkinson 18:14 attached 44:9 66:10 141:24 attachment 56:11 80:24 144:11</p>	<p>attempt 95:5 attempting 45:11 attention 95:9 106:23 166:5 attorney 5:15 6:6 6:24 11:13 12:21 13:2 17:3 54:19 63:2 82:18 attorneys 14:4,12 14:20 15:2,11 16:2,9,16 17:2,11 127:12 147:6 151:22 attribute 86:16,22 attributes 42:25 audio 26:16 augment 142:15 august 104:14 auslander 18:15 authorities 114:14 119:4 authority 80:13 80:23 107:18 110:13 117:3 151:11 authorization 76:16 165:7 authorize 151:21 151:22 authorized 67:9 76:9 142:11 147:1 147:5 160:5 166:9 authorizing 2:20 3:5,11,16,20 4:1,5 4:11,22 5:8,12,18 5:22 6:4,10,14,22 7:2,6,12,16 8:6,10 8:16,20 9:2,6,12 9:16,22 10:1,7,11 10:18,22 11:1,7 11:11,17,21 12:2 12:6 23:11 141:23 159:23</p>	<p>auto 159:11 autumn 19:22 available 96:19 avenue 14:5 15:5 avoid 64:2 127:2 avoidance 45:4 avoided 141:17 avoiding 141:14 awaiting 109:21 award 160:19,25 160:25 aware 25:10 27:9 28:4 68:24</p>
			<p>b</p>
			<p>b 1:21 3:4,10,16 3:19,22 4:1,4,7,21 5:8,11,14,18,21 5:24 6:3,10,13,16 6:21 7:2,5,8,12,15 7:18 8:6,9,12,16 8:19,22 9:2,5,8,12 9:15,18,22,25 10:3,7,10,13,17 10:22,25 11:3,7 11:10,13,17,20,23 12:2,5,8 13:2 18:20 23:12 77:7 77:11 78:2,24 79:3,6 81:9 117:11 141:23 159:18,18,25 160:13 162:1 b.r. 78:4 145:22 145:23 155:11 156:15 159:12 161:1 b.r.663 71:15 back 62:9,12 67:11 68:20 79:1 81:20,21 87:21 102:8,18 104:13 124:23 125:7 147:7 166:25</p>

[background - black]

Page 7

background 133:7 bad 40:8,19 41:1 balance 132:23 164:7 balanced 53:7 ball 18:16 bankr 71:15 78:4 145:22 156:2,2 159:12 161:2 bankruptcy 1:1 1:11,23 33:6,14 33:25 34:18 35:25 37:18 45:18 49:8 69:9,10,13,19 72:18 73:5,11,16 83:21 84:5 92:19 94:24 96:3 107:15 111:17 112:22 113:18 114:4 117:10 123:19,22 124:11 127:24,25 128:1,3 129:8 130:24 140:17 141:9 145:18 146:9,9 147:12 149:14,16,24 150:1 152:18,20 152:22 153:9,13 154:2,3 155:6 158:20 159:18 162:1,11 163:15 164:23 barely 136:13 bargaining 164:14 barker 17:19 barring 75:5 based 45:3 51:19 86:7 95:8 108:20 119:3 133:6 141:6 bases 150:4	basically 25:20 31:25 74:7 basis 46:4,8 49:3 67:5 77:19 88:1 100:6 112:7 124:25 145:9 149:4 bear 62:9 83:14 102:12 bearing 37:17 beginning 81:24 107:20 108:6 126:10 130:21 132:7 139:25 140:15 155:12 163:19 begun 23:24 behalf 2:5,11,16 2:21 3:1,6,13,22 4:7,12,16,24 5:4 5:14,24 6:5,16,24 7:8,18 8:1,12,22 9:8,18 10:3,13 11:3,13,23 12:8 12:14,20 13:2 23:21 48:7 58:9 90:18 99:12 110:22,23 111:2 114:23 115:13,19 117:17 138:10 behavior 96:8 believable 52:19 believe 24:3,19 33:23 40:4 43:24 44:24 47:1 55:24 60:8,23 64:7 65:11,24 66:7,20 71:25 78:2 90:9 90:10 91:5 95:8 95:22 96:11 97:25 110:3,5 114:23 115:7,13 120:9,12 121:4 122:1 124:8	125:19 128:9 130:9 131:1 133:4 133:6 135:18,20 135:22 136:3 137:8,12,13 141:11 143:15 145:19 148:4 150:11,14 152:15 153:12,22 154:4 158:18,21 159:24 160:2 161:11 162:25 165:18 believed 24:6 55:19 81:9 152:14 believes 54:12 55:21 belittling 48:16 bench 104:17 benedict 18:17 beneficial 40:24 45:6 51:22 beneficiaries 28:13 beneficiary 46:7 benefit 24:24 58:21 77:8,14 99:10 112:12 117:7 120:1 124:4 124:5 125:9 144:3 161:4,22 163:11 benefited 77:9 benefits 24:20 32:2,18 37:21 40:18 52:21 81:14 93:24 94:5 118:23 130:7 140:20 141:13,18 164:8 benefitting 52:24 benjamin 18:18 19:21 20:4 bernard 17:21 best 24:1 25:25 49:2,10 54:6	57:17 79:15 97:15 166:24 bethlehem 77:5 77:10,20 160:14 better 25:5 30:21 47:21,22 53:20 59:1 77:1 82:2 87:24 94:2 95:18 118:22 122:13 125:1 beyond 34:8 bickford 18:19 bid 85:10 big 59:11,12 77:14 93:5 126:10 billion 30:3 32:5 38:25 41:12,13 42:6 46:17 49:25 63:20 65:6,7 69:3 71:20 73:7,7 74:20,21 77:13 78:22 80:25 87:15 87:15 88:2,3,18 88:19 93:25 103:8 109:6,8 112:2,5 121:16,16,16,23 122:11 125:11,19 125:21 128:21 142:17,17 145:5 148:12,12 151:7 154:20 160:23 billions 122:14 131:15 bind 41:24 binding 62:1 binford 18:20 birmingham 15:6 bit 102:13 126:16 bizarre 35:1 blabey 18:21 black 126:20 132:2
---	---	--	--

[blends - cash]

Page 8

blends 126:3	129:6 146:24	calculus 54:6	49:22 51:23 52:6
block 61:17 159:6	151:20	calendar 23:7,10	57:10,13,14,20
159:11	bring 24:12 46:21	california 52:7	59:5,19 61:24
blocks 91:15 92:6	brings 53:21	call 27:15 82:21	63:4 64:12 67:18
92:17	broad 15:13 95:8	101:1 124:13	70:19 71:4,5,9
bloyd 4:17 15:2	126:16	133:22 166:4	74:2 77:5 78:2,3,3
118:1	broaden 26:23	called 48:12 142:1	79:18,21,23 83:21
board 70:4	broadened 44:17	143:24 145:11	84:5,13 86:5
body 28:19 51:23	broader 96:3	149:7 159:18	88:16 89:20 90:2
boffetti 17:23	broadly 70:8	162:16 166:7	90:20,22 91:5,9
18:22	brooks 17:19	canada 112:8,10	92:2,18,19 93:9
bograd 18:23	brothers 160:3	112:11,12,18,25	93:10,15,22 95:1
bondholders	brought 95:9	133:11	95:24 96:1,3,7
156:13	128:3	canadian 2:6,6	99:1 109:3 111:7
bones 119:21	brown 18:25	15:11,12 111:3,10	117:5 119:23
160:8	brushstrokes	111:24 112:9	121:25 123:22
boots 126:23	126:16	113:1,13,24 114:3	128:20 130:6,18
bottom 51:16	bryant 14:14	161:13	137:15,25 140:12
bound 38:15	buckets 116:1	candidly 33:18	141:7,7 143:9,16
41:23 146:21	build 48:11	capacity 57:21	148:3,15 151:25
boundaries 43:3	building 61:17	capital 17:5	152:7 153:13,16
brainer 151:3	91:15 92:6,17	caplin 16:15	153:25 155:2,18
braniff 43:21	159:6,11	capped 95:23	155:19 156:8
brauner 18:24	buildings 30:9	capturing 27:2	157:13 158:12
break 62:7	built 99:3	care 92:2 103:17	159:22 160:1,3,14
breyer's 103:20	bulk 84:9 100:15	103:18	160:24 162:8
155:16	bull 15:21	careful 98:6	165:13 167:18
brian 18:7,10	bunch 129:8	carefully 32:23	caselaw 124:23
bridges 15:2	burian 19:1	70:19 87:19 94:20	149:8
118:1	business 36:17	98:4 100:5 127:4	cases 31:22 33:13
brief 29:18 37:15	141:1 165:3	153:10	37:5 42:20 44:13
42:9 44:14 85:9	166:12,16	carolina 9:9 53:2	46:19 48:18 53:3
102:4,15 103:4	buttons 23:15	caroline 19:14	54:1,1,4 62:17
105:18 114:10	50:9	carrie 20:15	67:7,7,8 72:9
120:3	c	carrillo 19:2	81:11 85:8 130:25
briefing 89:2	c 14:1 23:1 170:1	carter 17:10	142:8 145:24
128:7	170:1	82:18	147:15,20,21
briefly 40:7 82:20	cahn 12:20 17:15	carve 116:22	149:14,16 150:12
83:3 105:17 118:7	82:11,11,14,17,17	case 1:6 23:6 28:1	150:15 151:6
briefs 31:13 33:4	87:9,11 88:9,21	28:17 29:4,12,15	155:14 161:16
45:9 63:24 74:15	89:7,18 122:3,25	34:14 43:16,18	163:19,20
91:8 120:14,25	cake 103:11	44:3,4 45:8,23	cash 30:21 50:4
121:6,10 128:17	110:11	46:3 48:14 49:18	80:22 86:15,15

[cash - class]

Page 9

<p>124:21 125:10 142:19 catch 131:12 catching 165:24 categories 50:17 category 149:22 149:22 catherine 17:25 cause 24:19 79:17 105:10 142:21 causes 112:9 caveat 64:21 ccaa 112:11,17 113:13 cease 31:13 130:16 centered 86:10 centerpiece 143:18 cert 154:8 certain 2:6 15:11 46:4 50:17 69:9 75:5 92:1 110:22 110:23 111:3 112:13 128:9 146:7 155:7 159:13 162:2 certainly 26:19 70:24 72:17 88:5 110:25 113:6 120:14 127:15 139:13 140:12 165:3 certainty 95:21 154:18 certified 170:3 cetera 59:24 77:21 113:20 119:14 chairman 135:12 challenge 90:23 95:11</p>	<p>challenged 42:20 163:25 challenges 90:3 chambers 26:9 chance 86:24 change 30:17 43:13 56:21 75:24 95:6 113:15 138:13 144:15 153:14 162:22 165:12,13 166:5 changed 44:16 56:24 162:14 changes 39:22 41:5 44:8 76:19 changing 55:17 101:18 channels 26:22 27:1 chaos 66:19 88:16 88:21 109:11,14 chapman 27:17 27:19,25 59:7 90:19 135:2 138:19 chapman's 57:25 138:20 167:5 chapter 1:5 31:21 141:17 142:3 147:15 charitable 50:4 145:4 charles 15:2 118:1 check 13:3 chen 19:3 chicago 16:11 chief 63:2 child 52:7,8 children 16:9 47:4 58:9 children's 47:4 chink 95:25</p>	<p>choice 94:4 choose 126:2 chose 82:3 chosen 79:17 christopher 3:22 4:7 5:14,24 6:16 7:8,18 8:12,22 9:8 9:18 10:3,13 11:3 11:13,23 12:8 13:2,4 21:5,16 church 67:7 cir 154:11 155:10 155:23 157:6 161:25 circle 16:17 circuit 31:16,19 34:22 35:1,7,14 35:19 42:12,14,15 43:20 44:11 45:8 49:24 51:5 62:3 64:7,8,10 66:16 67:2,6 74:15,19 80:18 88:14,15,18 91:8 95:21 97:5 108:17 117:5 120:25 121:8,25 125:4,5 128:7,15 130:25 131:4,15 144:18 145:16 146:5 150:25,25 152:9 154:7 157:18 159:5 162:24 163:3,23 165:1,8 circuit's 148:1 circumstances 44:5 124:9 136:9 146:7 160:1 cited 39:6 43:16 44:13 85:9 119:4 145:24 149:8 160:1</p>	<p>claim 43:7 64:23 64:24,25 74:12 83:23 84:17 87:25 103:21 113:3 152:23,25 153:1 154:15,16 156:11 157:4,17,17 163:10 claimant 53:17 156:12 claimants 5:5 50:15 83:24 101:19 110:24 118:23 150:16 156:21,21 162:18 162:20,21 claims 29:4 67:3 70:7,11,11,13,14 71:7,8 83:7,20,21 83:25 87:24 88:2 88:3 112:9 123:10 123:13,16 129:3 130:10,13,17 145:7,7 146:10 156:20,25 158:3,5 162:8 clarification 82:2 98:10,11,24 161:12 clarified 61:22 94:17 98:14 108:5 133:13 139:11 clarify 106:19,22 116:24 119:21 clarifying 118:4 class 39:12 41:6 41:14,19,25 42:3 42:4 64:23 96:5 101:14 116:2,3,6 116:10,13,21 119:2 148:18,19 148:19,20,20 152:24 154:21,24</p>
--	--	---	---

[class - complainants]

Page 10

<p>155:8 156:4,11,25 161:21 162:4 classes 41:7 153:17 161:19 classification 117:6 clause 34:2,22 166:10 clawed 86:11 clear 25:21 27:9 28:25 32:12,24 35:16 37:8 39:15 40:11,12 42:8 43:11 44:11,22 48:9,21 58:18 59:13 61:14,22 72:22 74:2 80:10 80:18 81:11 83:15 83:16,18 100:10 106:18,23 108:20 108:21 111:4,6 116:17,17 120:9 120:20 122:6,8 125:4,6 134:20 138:23 148:14 153:6 162:9,19 164:16 165:22 cleared 44:10 131:13 132:24 clearing 33:1 clearly 23:18 29:1 58:23 79:8 82:15 111:18 112:19 113:14 119:13 128:2 130:15 145:25 151:16 155:16 158:9 160:24 clements 6:23 clerk 27:25 47:12 clerks 27:17 client 88:23</p>	<p>clients 114:23 115:13,19,24 116:6 117:17,25 118:13 119:2 127:15 clock 27:11 close 71:17 83:18 closely 23:8 155:24 closer 24:12 25:4 53:21 closing 136:17 code 33:6,14,25 34:18 35:25 37:18 49:8 69:13 72:18 81:10 94:24 107:15 108:11 109:18,19,24 112:22 122:4,21 127:25 128:1 129:8 130:24 140:18 141:9 145:18 146:10 147:12 152:18,20 152:20 153:9 154:2,4,25 155:6 158:20 159:18,19 159:24 162:11 163:16 164:22,23 cognizable 41:14 cold 80:22 collaboratively 73:6 collateral 42:24 68:13 77:24 81:1 99:19,21 100:19 100:20,22 101:6 125:16 collect 55:9 collecting 55:10 100:1 collectively 73:5</p>	<p>collier 117:10 162:1 colloquially 76:25 153:22 colloquy 40:10 96:11 133:9 colorado 53:2 columbia 25:1 61:20 71:6 116:2 137:21 142:3 144:4 145:12 146:21 151:19 153:15 160:10 162:3,5 163:14 combine 124:14 come 46:21 51:9 87:19 90:1,3 91:25 92:21 97:18 102:18 103:8 111:12 115:4 123:3 140:20 161:6 comfort 81:20 120:6 129:7,12 comfortable 79:5 96:24 130:1 coming 23:24 41:21 47:19 52:3 52:15 68:22 69:4 69:17,18 72:20 79:24 83:2 85:7 92:25 93:18 107:1 111:10,23 127:23 157:16 161:5 166:23 comma 44:15 commend 102:7 comment 79:22 117:25 commenting 167:9 comments 48:2 58:14 89:13 94:22</p>	<p>167:10 commission 133:21 commitment 90:19 160:9 163:19 committed 32:5 committee 4:13 5:4 14:12 16:9 47:3,4 48:8 58:9 70:17 77:8 89:22 90:18 91:2,6,11 93:13 94:3,7,14 94:18 101:13 103:3 110:21 160:3 committee's 5:1 committees 46:5 77:7 159:23 common 37:4 120:1 commonwealth 4:7 7:18 communication 168:6,7 communications 156:14,14 companies 70:8 company 154:7,9 155:9 157:5 compelled 115:20 compelling 84:12 compensation 53:22 54:24 94:25 competence 164:12 competent 65:13 66:5 competing 101:7 complain 158:11 complainants 89:22</p>
--	---	---	---

[complete - consummated]

Page 11

<p>complete 88:16 100:12</p> <p>completely 37:5 57:18 75:7</p> <p>completes 46:14</p> <p>complex 92:13</p> <p>complexities 90:3</p> <p>complexity 29:13 90:22 100:9</p> <p>compliance 36:1 152:19 159:3 164:5,22</p> <p>complicated 125:14 126:16</p> <p>complies 159:6</p> <p>conceded 75:14</p> <p>conceivable 74:13 128:16,23</p> <p>conceive 160:18</p> <p>concept 115:2,2</p> <p>concepts 114:25 115:4</p> <p>concern 34:13,16 58:18 67:20 73:15 73:16,16 96:25 104:12 112:24 113:22</p> <p>concerned 71:5 72:1 94:15 100:13 104:21 139:11 145:2 147:21 167:5</p> <p>concerns 68:17 69:7 136:1 167:13</p> <p>concession 32:1 50:6,13 80:3 81:16,23</p> <p>concessions 53:14</p> <p>conclude 24:24 77:4 79:13 141:8 149:21 151:1,2 163:22</p>	<p>concluded 102:19 168:8</p> <p>conclusion 31:22</p> <p>condition 35:3,6 45:21 149:1 152:13 163:4 165:8</p> <p>conditional 32:24 33:2 76:8</p> <p>conditioned 32:15 64:15 76:2 146:4 146:12,16 147:25 149:18 152:6</p> <p>conditions 32:13 45:12,19 141:25 143:8,20 146:22 147:4,11 148:5 149:1 151:4,14,25 161:6 162:23 165:5</p> <p>conduct 103:5</p> <p>conducted 164:18 164:20</p> <p>confessing 107:5</p> <p>confident 61:1 127:17</p> <p>confidentiality 24:2</p> <p>confines 140:17</p> <p>confirm 56:16 67:3 141:5</p> <p>confirmable 61:18 62:2</p> <p>confirmation 45:21 57:8 61:25 63:14 64:15 66:17 67:12 69:12 72:14 72:16 76:4 78:7 85:11 87:18,22 88:19 90:4 91:14 91:17 92:20,22 94:11,14 102:20 104:13,15 108:18</p>	<p>118:20,21 124:6 125:6 142:2,5 145:14 146:6 148:1 152:7 154:19 158:24 159:22 162:24</p> <p>confirmed 35:8 45:18,21 76:15 101:18 104:16 123:1 126:15 145:3 153:23 162:22</p> <p>confirming 32:16 37:23 129:21 145:8,19</p> <p>conflict 34:8</p> <p>confronted 29:11 92:16</p> <p>confusion 37:9 80:4</p> <p>congress 108:24</p> <p>connecticut 54:20 54:23,24</p> <p>connecticut's 54:21</p> <p>connection 25:9 54:10 91:13,23 92:22 98:23 138:20 140:7 142:15 147:15</p> <p>connolly 19:4</p> <p>consensual 71:18 71:21 97:3</p> <p>consensus 48:12 92:10,12 98:13</p> <p>consent 31:12 41:23 49:12 123:17 127:23 154:14</p> <p>consented 128:2,6</p> <p>consenting 77:21</p> <p>consequence 65:5 68:5 153:4</p>	<p>consequences 65:14 151:18</p> <p>consequently 137:1</p> <p>consider 72:18 97:10,21 147:23 154:5</p> <p>considerably 142:16</p> <p>consideration 28:14 37:7,11 59:15,16 66:2,6,7 73:11,12 93:7 134:1,12</p> <p>considerations 86:19</p> <p>considered 153:10</p> <p>considering 72:17 154:10 156:17</p> <p>consistent 54:16 56:9 59:3,19 98:3 99:2 126:17 152:10 165:10,12</p> <p>consistently 61:3</p> <p>consisting 112:3</p> <p>consists 108:5</p> <p>consla 19:5</p> <p>constituency 28:15</p> <p>constitute 42:11 43:7 165:17</p> <p>constitution 45:22</p> <p>constitutionally 45:15</p> <p>constrained 146:7</p> <p>construction 8:2</p> <p>constructive 48:19</p> <p>construing 155:2</p> <p>consummated 38:20</p>
---	---	--	--

consummation 35:21 132:16 166:11 contained 36:17 37:21 contains 40:17 45:19 124:5 166:10 contemplate 34:20 35:2 56:3 contemplated 33:4 34:11 37:1 147:3 152:13 153:4 contemplates 35:3 101:10 143:21 146:11 154:13 contemplation 101:18 contend 43:6 162:2 contended 159:20 content 34:10 contention 45:24 153:3 contested 38:15 context 26:21 68:14 87:14 97:21 138:5 145:2 148:24,25 153:7 153:19 155:25 contexts 126:5 contingencies 144:16 contingency 30:15,23 159:8 contingent 5:5 104:19 107:7,21 107:24 108:11,12 108:13,15 124:25 131:24 132:15 146:5,12 150:19	continuation 135:4 continue 48:18 63:24 65:2 66:20 90:2 continues 63:14 contrary 55:6 113:7 152:14 156:24 contravene 33:5 33:12,13,19 35:25 108:11 130:23 131:1 147:12,19 148:8 154:25 158:20 163:1 contravenes 33:22 107:15 108:9 contributed 145:5 contributing 97:20 contribution 50:4 95:1,3,19 159:19 160:19,25 controversial 95:4 98:15 143:15 controversy 92:11 convert 50:3 convince 31:17 convincingly 157:15 copied 63:5 copy 141:24 corp 117:4 145:22 154:6 155:15 156:14,15 161:25 corporate 84:6,10 125:14 correct 37:5 56:16 59:25 84:21 90:15 116:8,12,23 132:14 134:10 135:15 136:20	138:15,17 139:3 165:25 166:18 corrected 35:23 cost 32:1 costs 140:21 counsel 63:6 89:21 94:18 101:24 111:6 161:17 164:12 count 145:3 country 38:5 54:25 58:22 170:21 county 2:16,16 3:1 couple 29:12 44:24 58:13 78:5 82:4 114:21 119:15 124:14 134:25 157:1 coupled 128:20 courage 26:13 167:21 course 28:15 34:15 35:14 37:5 38:21 41:22 45:16 45:22 48:22 50:20 61:4 76:11 78:17 79:6 93:25 103:7 106:21 114:16 159:5 163:4 165:23 court 1:1,11 13:4 23:2,17,19,23 24:10,16 25:6,10 25:13,17,22,24 26:2,16 27:4,7,24 29:18 31:4,7,9 32:8,20 33:6,7,11 33:12,18,23 34:13 35:18,19 36:9 38:9 44:20 46:9 46:13,25 47:13,19	47:22,25 48:5 49:6,8,25 55:14 55:16 56:2,18,25 58:4,11,16 61:8 63:16 64:10 65:4 65:13,16,18 66:1 66:5 67:1,17 68:3 69:22 70:6 72:23 73:23 74:18,23 75:15,20,22 76:3 76:4,13,21 77:13 77:16 78:21 79:4 79:20 80:7 81:16 81:19,22 82:4,13 82:16 87:8,11 88:10,23 89:8,14 89:17 90:5,25 91:6 92:21,23 95:20,21 96:22 97:10 98:17 99:8 101:9,22,23 102:12 103:7,14 103:19 104:4,18 105:3,11,12,14,21 106:4,9,11,15,21 107:3,9,15,18,19 107:24 108:4,10 108:15,21 109:1 109:10,22 110:3,7 110:13,16,19 112:14 113:8,13 114:1,7 115:15,18 115:20,21,23 116:9,12,16,20,25 117:3,18,20 119:1 119:8 120:4,7,16 121:13,15,19 123:7 124:16 125:2,23 126:7,8 126:25 127:19,24 128:3,7 129:7 130:2,3,9,20 131:7,19,21 132:5
--	---	--	--

132:12,17,18,24 133:2,12 134:7,20 135:9 136:13,16 137:6,9,11,18 138:3,8,12,22,25 139:5,8,14,18,23 140:2,4,24 141:3 141:21 142:10 143:4 145:2,9,9 145:15 146:9 147:20,20 149:11 149:14,19,23,25 150:1,2,4,5,5,9,9 150:20,21 151:9 151:20 154:5 155:17 157:20 165:1,18,20,22,23 166:13,15,21 167:4,13,16,18,24 167:25 168:1 court's 31:1 37:23 61:1 63:14,16,17 63:18 76:18 88:15 95:9 103:5 107:13 107:21 114:3 129:23 131:5 146:6,8,18 156:16 165:17 166:5 courtesy 120:15 courthouses 38:4 courtroom 167:15 courts 42:9,25 67:8 72:15 78:5 149:8 152:3 155:24 156:8 157:2,7 160:12 court's 66:16 126:22 143:17 coutts 19:6 cover 139:21 covered 43:10 70:9	craft 24:5 crafting 60:2 crayton 118:1 create 48:12 86:20 created 98:25 108:24 144:24 creating 88:21 99:6 106:25 credible 99:9 credibly 38:16 credit 52:9,13 credited 97:19 crediting 134:13 creditor 28:17,18 41:6,19,24,25 42:24 51:6,23 54:12 56:3,17 57:13 85:9 111:12 123:14 141:13 creditors 2:6,7 14:13 15:11,12 28:18 29:14 32:3 37:21 39:12 41:14 42:3,10 47:3 48:8 49:21 51:2 70:17 79:16 83:25 85:10 85:15 93:1,12,15 93:17 95:1,6 103:3 110:22 111:3,10 112:9 118:2 123:23 124:4 128:20 151:6 164:11 creighton 4:17 15:2 crisis 86:3,14 102:6 109:16 150:16 critical 43:9 91:16 124:10 160:9 criticism 48:16	crockett 12:14,14 19:7 cross 52:1 139:13 crucial 95:9 crushing 46:15 crux 111:23 crystalize 93:4 ct 154:8 155:15 current 30:16 currently 30:15 30:22 32:16 36:4 38:20 44:16 46:11 123:4 145:15 cut 121:1 124:3 cybersecurity 168:2 cyganowski 19:8 czyzewski 155:15 d d 1:22 19:22 20:1 22:3 23:1 71:15 117:9 144:11 156:2 161:24 169:1 d'apice 4:12 d.c. 16:18 dakota 10:4 damage 99:6 daniel 19:4 20:20 darren 20:6 date 30:22 37:6 50:5 66:11 124:21 143:11 156:18 170:25 david 18:8,21,25 20:11 davis 14:3 23:21 56:16 day 27:12,13 36:15 38:4 50:18 69:19 80:22 81:15 89:6 91:4 95:13 118:9 125:24	136:17 154:25 155:1 days 49:19 dbsd 42:13 72:8 155:22 de 44:8 deadline 28:9 deadlines 24:22 deal 36:17 56:1,5 56:8 58:20,21 67:19 70:5 71:2 71:20 80:25 86:12 93:5 96:22 97:6 103:1 104:22 107:7 108:12,13 110:14 114:19 121:2,2 124:3 125:12 166:12,16 dealing 164:7 deals 69:8,11 71:11 123:20 132:9 dealt 154:9 160:3 160:4 161:11,14 deaths 118:12 debt 28:1 debtor 39:16,17 39:18 56:4 63:9 64:19 75:22 76:10 76:25 93:13 94:17 103:2 123:23 164:2 165:6 debtor's 12:12 23:8,10 25:11 39:16 63:10 69:16 75:1,14 129:3 152:5 157:13 debtors 1:8 2:19 3:3,8,10,15,19,25 4:4,21 5:2,7,11,17 5:21 6:2,9,13,20 7:1,5,11,15,22 8:5 8:9,15,19 9:1,5,11
---	--	--	--

9:15,21,25 10:6 10:10,17,21,25 11:6,10,16,20 12:1,5,18 14:4 23:21 32:1,7 36:25 37:9,15 38:19,19,24 39:4 40:16,18,19,20,25 41:16,20 42:22,23 45:7 46:4 48:3,22 50:16 55:5 58:25 67:21 69:11 70:16 88:5 101:13 103:10 104:5,14 105:4 106:18 110:11 112:16 113:23 122:7 127:11 128:2,13 128:16,24 132:20 132:21 140:25 141:1,22 142:2,6 146:25 147:5,17 147:22 151:21,22 157:14 158:2 debtors' 31:21 104:23 121:2 126:6 debtor's 83:9 decide 34:25 74:14 77:1 105:4 decided 29:8,9 67:23 68:2,12 88:20 105:3 125:1 158:8 deciding 87:12,13 decision 35:13 63:17,18 133:25 146:8 decisions 80:17 dedicate 142:22 dedicated 88:24 119:15 163:12	dedication 27:21 58:1 90:24 deemed 42:23 123:5 deep 68:17 83:19 default 40:2,3 55:5 56:7 defaults 55:9 defeat 152:16 defeating 158:8 defer 150:1 deference 86:3 defined 144:2 155:5 definitely 136:21 definition 33:9 34:18 definitive 66:10 104:3,9,9 151:23 definitively 68:6 157:16 del 71:15 117:9 156:2 161:24 delaware 42:13 154:7 delay 164:10 delayed 73:14 delete 166:18 deliver 31:25 denied 30:5,10,22 46:16 132:13 154:8 158:15 denies 71:12 denigrate 52:17 denigration 48:16 deny 149:3 150:2 150:3 depalma 15:10 111:2 department 14:19 17:1 102:2 129:22 depending 74:4 88:12,14 134:2	142:16,18 144:16 162:7 deputy 26:10 63:2 described 129:2 142:21 159:16 160:21 designed 60:3 desire 86:23 150:14 despite 83:5 destructive 32:4 detailed 44:3 details 58:20 60:18 61:22 determination 143:17 determine 97:4 104:24 115:18 determined 53:8 67:23 96:20 determining 153:7 detest 116:12 detract 59:8 detrimental 53:25 developed 96:1 developing 91:12 development 142:8 devoted 57:11 59:17 61:10 91:3 119:17 144:7 devoting 92:7 dictates 158:23 died 118:11 dies 52:9,13 difference 69:1 77:6 79:2 106:11 differences 48:17 different 43:21 56:20 64:11,13 68:1,4 72:7,8,25 75:7,7,8 78:5,15	93:1,2 102:10 104:1 111:11 114:1 115:25 120:13 121:1,11 123:10,21,23 126:5 131:18,23 149:17 152:2 153:11 157:3 differentiated 124:12 differently 75:2 78:21 124:2 difficult 26:12 27:13 69:9 90:1 90:12 93:23 94:3 95:12 96:9 164:19 difficulties 104:6 difficulty 90:6 106:10 dime 86:12 diplomatic 73:1 direct 32:2 33:4 35:25 36:19 37:8 38:12,17,23 39:1 39:2,10 61:13 111:8 124:19 144:10 directed 104:20 147:6 directing 147:24 157:23 direction 133:25 directly 43:2 50:23 118:23 122:22 163:10 disagree 58:19 103:16 105:19 127:8 disagreeable 72:3 disagreement 98:9 disappointed 72:22,24 73:2
--	--	---	--

84:24 disappointment 82:22 disappointments 84:23 discharge 41:16 disclosure 105:2 111:17 152:8 discomfort 120:6 discourage 69:12 discrete 44:9 discretion 94:22 115:18 142:12 discussed 44:7 45:3 61:23 83:2 149:19 156:13 160:7,14 discussion 44:3 99:15 155:12 discussions 64:1 98:12 125:17 disguised 159:8 disingenuous 93:20 97:13 dismissal 155:19 disorder 118:24 disparate 157:10 disposing 83:17 dispute 86:8 102:5 105:7,8,12 disputes 85:17 disservice 26:19 dissonance 123:6 dist 117:8 161:23 distinct 157:4 distinction 69:18 149:9,15 155:3,14 155:21 distinguish 43:22 61:24 distribute 40:17 51:13 150:15	distributed 37:13 39:20 41:8 93:17 99:2 100:6 103:17 111:14 115:15 121:23 134:4 154:21 163:9 distribution 38:20 39:4 42:1 43:8,13 50:8 99:2 143:25 144:1,15,23 148:11 150:20 154:2,23 155:17 164:24 distributional 41:9 44:19,19 distributions 41:15 84:10,11 93:18 99:24 151:5 153:17 162:21 163:2 district 1:2 25:1 35:19,20 49:25 61:19 63:17 66:16 71:6 88:15 107:17 107:21 116:2 128:7 131:4 137:21 142:3 144:3 145:9,12,15 146:21 151:19 152:4 153:15 155:13 156:16 160:10 162:3,5 163:14 dive 83:19 divert 93:14 diverted 85:14 diverting 96:21 divest 149:23 150:9 divestiture 145:21 149:7,23,25 150:8 151:1	divestment 149:9 divide 52:1 docket 24:4 28:11 34:14 121:7 doctrine 78:16 145:21 149:7,23 149:25 150:8,11 151:1 document 2:4,10 2:15,21,25 3:12 3:21 4:6,12,16,23 5:3,13,23 6:5,15 6:23 7:7,17,23 8:1 8:11,21 9:7,17 10:2,12,19 11:2 11:12,22 12:7,15 12:20 13:1 39:14 50:16 111:7 143:1 document's 106:15 documentation 98:20 147:1 151:23 160:7,21 documents 43:10 50:17 66:11 78:10 100:18 104:9,11 104:25 106:7,13 107:8 111:22 dog 67:4,5 doing 24:25 71:22 83:19 84:7 127:6 133:18 167:14 doj 28:16 129:16 129:18 130:6 148:7 dollar 126:13 dollars 85:10 112:2 121:17,21 125:21 142:17,18 148:12 151:8 donor 30:12 don't 127:22 135:5 136:6	138:17 167:17 doubt 45:4 60:20 68:4 81:3 109:9 167:17 draft 76:13 drafted 32:23 127:5 drafting 56:3 72:2 dragged 49:18 drain 1:22 23:3 62:12 dramatic 60:24 drew 42:15 86:19 dropped 116:11 drysdale 16:15 due 31:13 45:9 55:4 86:3 100:23 121:2 146:24 dwarf 84:1 dylan 19:5 dynamics 71:24 dynamite 59:6 d'apice 19:9 e e 1:21,21 2:10 6:23 14:1,1 18:6 18:21 23:1,1 169:1 170:1 earlier 40:20 51:11 55:4 120:16 134:21 159:22 early 53:4 59:20 100:14 101:7 easier 131:11 easily 67:18 97:24 easy 95:12,14 99:17 eat 67:4 103:11 110:11 eberhardt 19:10 ecf 2:2,7,11,16,22 3:1,6,13,17,21,23 4:2,6,8,13,17,23
---	---	---	--

<p>4:24 5:5,9,13,15 5:19,23,25 6:7,11 6:15,16,24 7:3,7,8 7:13,17,19,23 8:3 8:7,11,12,17,21 8:22 9:3,7,9,13,17 9:19,23 10:2,4,8 10:12,14,19,23 11:2,3,8,12,14,18 11:22,24 12:3,7,9 12:15,22 13:4 eck 17:24 ecke 7:23 ecke's 7:21 eckstein 5:3 14:25 89:10,11,15,20,21 90:6,15 98:22 99:14 101:21 117:15 119:20 125:18 126:1 129:15 economic 57:13 59:14,15 122:16 ecro 1:25 edmunds 18:10 edward 18:6 effect 53:25 76:1 76:14 86:16 112:17 128:16,24 148:3 163:8 effective 30:1,22 35:6,17 50:5 66:11 77:22 97:6 124:21 131:25 146:18 156:18 effectively 92:4 effectiveness 30:15 35:4 45:13 149:2 162:23 effects 159:14 effectuated 66:3 effort 69:5 90:21 91:9 92:14</p>	<p>efforts 27:20 29:1 48:17 55:1 59:10 59:10 81:4 90:19 90:24 91:3 120:11 150:12 eight 27:15 142:2 eitel 14:24 102:1,2 103:10,15,25 104:6 106:3,7,10 106:14,17 107:5 107:12,23 108:1,8 108:19,24 109:9 109:13 110:10 either 36:12 40:19 64:19 67:23 69:12 74:18 88:13,14 110:15 127:5 133:12 161:16 164:22 elegantly 35:22 element 135:4 137:19 140:12 elements 88:12 91:19 eli 3:5,12 14:9 56:15 eliminate 102:22 elizabeth 18:2,12 21:13 ellen 10:16,19 19:25 else's 62:19 emails 133:6 embodied 91:18 163:20 emerge 131:16 emergence 31:21 emotion 129:9 emotions 50:24 empathize 40:21 129:10 emphatically 42:19</p>	<p>employ 113:24 enable 35:8 77:22 165:7 enables 87:14 encourage 140:25 encouraged 29:3 95:20 102:17 encourages 123:20 endedness 94:16 endorsed 99:4,5 endowments 30:10 ends 42:7 109:17 energy 90:21 154:6 157:5,12 enforce 100:18 149:12 enforceability 115:11 enforcement 56:19 72:1 enforcing 100:21 100:21 engaged 48:11 enhance 78:12,14 92:3 151:5 enhanced 29:25 35:21 78:18 96:21 97:3 141:10 150:19 163:11 166:11 enhancement 95:16,17 160:22 160:23 enhancing 78:6 78:11 enormous 58:21 120:10 140:21 ensure 55:3 61:2 96:19 enter 49:9 156:17</p>	<p>entered 33:21 34:8,14 77:7 80:16 83:5 133:3 142:9 147:20 165:13 enterprises 155:11 entertain 92:24 entire 28:18 86:5 121:25 entirely 39:2 42:1 46:3 111:11 131:24 entities 2:11 30:17 47:7 50:12 91:3 114:12,15,15 115:7 116:4 148:16,16 153:17 entitled 129:21 160:19 entity 71:13 entrenched 58:19 entries 34:15 entry 3:4,9,11,16 3:19 4:1,4,10,21 5:8,11,18,21 6:3 6:10,13,21 7:2,5 7:12,15 8:6,9,16 8:19 9:2,5,12,15 9:22,25 10:7,10 10:17,22,25 11:7 11:10,17,20 12:2 12:5 23:9,11 35:18 45:5 49:4 107:23 132:15 147:9 enunciated 165:1 epidemic 51:21 52:4 54:16 57:12 equal 119:3 equality 72:19 92:10 154:1 164:24</p>
--	--	--	---

<p>equally 35:1 121:15 167:1 equivalent 77:19 erase 30:8 eric 4:23 5:15 18:1 21:22 error 133:15 eskandari 17:21 especially 26:5,11 62:19 115:9 149:14 essence 62:1 essentially 60:9 70:11,19 94:25 95:5 96:8 97:13 97:19 99:25 esserman 19:11 established 25:10 30:18 36:23 estate 39:9,19 40:23,25 49:3,10 49:20 52:15 53:14 53:21 54:4,7 57:18 66:23 68:23 69:17,23 70:12 72:5,5,6,9,20 78:11,12,14,15,17 83:17 84:19 85:14 87:6,15,20,25 88:2,6 92:4 96:22 97:3,18 103:1,8,9 103:12,20 105:10 105:13 110:12,14 110:17 121:20 122:5,7,9,10,12 123:4,5,13 125:20 129:3 130:8 140:16,20,21 144:14 145:6 151:13 155:4,5,5 155:8,17,21,21 156:22,23 157:13 157:17,17,24</p>	<p>158:3,13,15 160:22 161:5,6,6 162:17 estate's 70:10 71:8 78:17 122:19 122:20 123:9 126:5 145:6 166:24 estates 30:1 32:2 32:3,6 37:13,21 38:24 40:18 41:20 45:7 128:24 132:22 esther 21:25 estimated 143:11 161:8 estoppel 68:13 et 1:6 8:3 15:19,20 23:3 59:23 77:21 113:19 119:14 evading 112:25 evaluate 68:9 evaluation 76:23 evan 17:22 20:2 evening 38:14 event 34:5 49:20 55:4,8,22 56:7 101:4 118:14 145:20 150:10 151:14 154:24 events 131:24 everybody 85:21 87:4 88:18 94:2,7 97:16 100:5 125:9 126:21 evidence 99:9 135:5,23 136:3,25 137:25 138:5 139:14 141:9 evidentiary 86:21 eviscerate 109:18 ex 3:8 12:21</p>	<p>exact 41:23 74:10 exactly 35:17 55:25 80:9,14 81:19 111:22,22 123:12 129:11,24 135:15,18 examining 139:13 example 52:5,6,11 61:24 124:20 134:3 145:21 155:9 157:12 exceed 112:5 exceeding 83:21 exception 32:20 112:7 excess 83:23 122:14 exchange 41:15 121:22 130:17 exclusively 39:3 46:1 59:17 61:10 119:17 144:7 excuse 70:21 108:9 151:1 157:22 executive 102:2 exercise 110:13 exist 60:19 existed 124:8 existing 30:17 32:6 39:22 40:17 128:22 129:2 exists 65:2 152:15 expand 149:12 expect 26:20 80:17 167:10,17 167:20 expected 39:25 expedited 145:16 expense 164:9 expenses 36:3 151:25 160:4</p>	<p>experience 164:12 experiences 118:11 experiment 38:8 explained 86:19 explicable 164:1 expression 70:23 extended 24:23 extent 24:1 96:20 97:24 98:24 116:10 126:21 127:24 142:6 161:17,18 extolled 81:4 extra 53:14 80:25 93:25 134:11 162:2 extraordinarily 92:13 114:10 extraordinary 27:19,19 29:13,21 120:10 160:15,23 extremely 28:9 59:9 80:20 81:8 125:8 163:18 eye 92:7</p>
			<p>f</p>
			<p>f 1:21 21:18 56:6 71:14 170:1 f.2d 161:25 f.3d 154:11 155:10 157:6 f.3d. 155:23 163:24 f2d 117:4 face 30:11 35:16 44:11 81:11 86:2 faced 94:4 facilitate 29:2 95:21 facilitating 31:21 facility 144:2</p>

[facing - five]

Page 18

facing 60:22	105:9,12 115:9	feinberg 70:20	finally 157:7
fact 23:24 24:3,5	118:13 138:10	feiner 19:12	find 33:11 66:19
24:17 28:12,13,24	143:22 167:7	feld 14:11	67:2 93:20 104:7
29:19 31:24 38:21	fancy 25:16,17	felt 68:9	105:25 110:17
39:5 42:19 45:3	fantasy 105:21	fiduciaries 54:4	131:23
45:12 46:9 51:14	far 34:20 37:19,19	57:20	finding 107:16,24
59:8 64:7 69:19	71:5,25 77:25	fiduciary 53:14	108:1,4,10
71:9 83:5 85:22	78:16 113:19	140:15	findings 107:13
86:1 87:2 89:25	114:2 145:1	fiercely 40:14	finds 109:14
92:19,24 95:5,13	153:16 167:4	fifth 43:20 50:19	131:21
111:21 116:17	farther 128:12	fight 51:20 52:3	fine 23:17 31:4
120:15,17 138:16	fashion 117:1	57:14 88:17	60:2,15,16 73:2
148:7 158:14	147:7	fighting 57:12	89:14 112:7
159:2,2,8,10	faster 121:24	79:12 109:5,7	116:16 117:18
163:25	fatal 39:5	figure 106:6 121:1	137:15 138:22
factor 81:15 164:6	favorable 64:24	file 63:9,24 74:14	139:6,18 140:3
factors 53:8	80:20 152:25	89:9 106:19	finished 70:20
163:23,25 164:21	154:16 159:5	146:24 151:20	140:5
facts 42:7 92:25	fax 65:22	filed 2:5,10,15,21	finzi 19:13
110:5	fear 76:20,21	2:25 3:5,12,21 4:6	firm 28:25 98:11
fading 24:11	feature 143:13	4:12,16,23 5:3,13	111:2 142:17
25:13	features 143:14	5:23 6:5,15,23 7:7	firmly 127:14
fail 135:19	february 156:3	7:17,23 8:1,11,21	firms 114:18
faintly 47:19	fed 154:7	9:7,17 10:2,12,19	first 2:6 15:12
fair 51:12 100:8	federal 40:15	11:2,12,22 12:7	23:8,13,13 40:9
126:22 127:22	116:4 140:18	12:13,13,20 13:1	49:14 51:24 54:9
fairly 127:4	148:16 167:13,16	23:25 24:18 28:11	57:2 59:14 62:23
144:21	167:18,24,25	28:19,25 29:4	63:3 70:10,16
faith 40:8,19 41:1	168:1	47:1,3 53:19 62:5	72:21 76:3 101:19
49:13 56:4 101:12	fee 36:2	62:23 63:5 82:6	103:19 111:3,4
fall 115:25 116:6	feedback 30:24	86:18 91:7 94:21	113:11 114:21
116:9,13	31:3,5	102:22 103:4	120:11 122:11
falls 149:21	feel 34:5 58:6	111:7,22 114:20	128:10 132:10
false 43:7	62:18 82:8	114:22 115:16	149:6 153:18
familiar 131:2	feelings 50:24	120:25 121:10,11	154:12 155:15
families 61:12	fees 35:6 36:3	128:17	161:13
119:19 129:22	46:1,5 77:3,4	filing 31:12 33:3	firsthand 90:20
143:6 144:9	78:19,24 94:17	45:9 104:19	fish 107:7
147:13 150:18	98:19 121:22	120:18,19 129:6	fit 78:1 79:5
163:7	127:12 143:8	final 46:14 66:4	fitch 15:3 118:2
family 46:17 52:6	147:6 151:22	133:14 134:18	fits 160:24
66:5,15,18 83:8	159:14,20,23,25	140:8,23	five 43:24 104:15
102:8 103:17	166:6,9		139:20

fl 17:6 flesh 119:20 160:8 flier 34:9 floor 15:21 133:17 florida 12:13,19 13:3 17:1,2,4 48:11 52:12 53:23 62:22 63:2,7 64:17 florida's 3:18 4:3 4:20 5:10,20 6:2 6:12,20 7:4,14 8:18 9:4,14,24 10:9,24 11:9,19 12:4 62:17 63:6 floridas 8:8 focus 36:18 86:5 110:4 127:12 148:9 focused 90:7 164:6 focusing 71:4 107:2 127:4 fogelman 18:9 fold 70:16 folks 114:13 115:6 follow 54:18 followed 48:23 70:22 following 32:10 38:9 49:6,24 52:5 67:8 146:19 158:24 footnote 115:24 116:11,11 118:2 forbid 27:2 force 125:7 157:20 foreclose 76:19 forego 31:12 foregoing 158:12 170:3	form 28:24 29:14 34:2 35:12 36:20 118:3 formal 135:17 format 64:19 formula 70:19 148:21,22 formulae 42:1 forth 25:2 34:20 37:15 50:8 102:4 102:15 111:15 112:2 124:24 144:11 145:7,21 146:8,23 147:4,7 151:18 157:12,25 forward 24:13 56:1 60:24 64:20 77:18 96:13,25 104:21 125:23 126:11 151:24 161:10 168:7 fostering 78:6 fought 27:13 30:19 found 34:3 43:19 44:5 61:17 62:2 81:2 135:16 155:22 163:8 foundation 30:19 80:22 124:20 foundations 30:18 125:10 134:14 142:21 145:4 four 24:23 43:5 51:24 53:23 64:13 76:1 88:12 140:13 fourth 50:16 fowl 107:7 fraction 36:6 framing 120:16 frank 15:1,8 117:24	franklin 4:16 frankly 24:21 61:15 66:16 77:20 79:15 93:20 113:8 130:5 149:17 151:8 166:21 fraudulent 70:11 71:13 72:10 83:7 83:20 84:6,15 88:7 103:21 112:25 113:19 123:9 130:10 145:6 free 66:17 82:8 friday 31:13 45:9 128:17 129:6 146:25 front 49:6 62:8 68:19 91:8 fronts 166:20 fruition 46:21,22 115:4 frustration 70:23 79:21 82:22 frustrations 40:21 fulfilled 151:5 152:1 161:7 fulfills 165:8 full 120:10 134:13 fully 29:1 36:25 51:11 70:17 129:9 fund 8:2 15:20 36:23 48:12,13 51:12,19 52:10 54:21 60:7 86:20 98:25 117:7 144:5 148:13 161:22 fundamental 43:25 72:18 fundamentally 95:6 funded 39:8 69:20	funding 68:25 76:5 funds 30:6 36:20 38:2 41:8 50:8 51:13 59:2,16,22 60:25 61:9,13,14 61:20 92:7 111:14 111:16,18,18,20 111:23 113:24,25 123:5 141:2 144:10,13,24 150:15 152:5 157:17 160:10 161:5 163:6,8,9 further 31:16 60:20 61:2 79:1 141:20 149:24 furthering 50:18 future 45:2 69:8 71:3 73:9 104:8 104:24 120:6 121:12 127:3 143:12 146:14 154:6 157:12 164:8
g			
g 23:1 ga 15:22 gabriel 21:12 game 103:22 108:23 gange 19:14 gary 19:19 gas 145:22 gathering 63:8 geldreich 19:15 general 5:15 6:7 11:13 12:22 13:2 17:3 54:19 63:2 72:19 82:19 127:16 128:11 general's 6:24			

[generally - guaranteed]

Page 20

<p>generally 109:2 142:7 148:18 151:13 161:24 genuine 85:13 geoff 17:20 geoffrey 19:6 george 20:21 georgia 7:8 gerard 16:6 20:13 138:9 getting 34:4 41:11 41:15 51:3 52:22 63:8 105:24 114:25 119:9 120:13 125:20 128:20 131:14 133:7 144:17 157:3,10 158:16 163:2 164:3 giddens 19:16 gill 19:15 gillian 19:12 give 26:14 51:7 86:16 100:22 101:6 102:8 118:12 120:5 133:18 150:10 given 24:2,22 26:6 28:9 34:8 37:12 40:2 50:7 69:19 80:17 86:3 88:5 92:3 115:5 129:6 129:8 145:20 147:20 148:4,14 150:14 151:17 160:15 163:6 gives 41:18 63:14 81:20 149:24 giving 49:21 112:25 121:20 164:2 glad 132:24</p>	<p>gladly 167:5 global 112:6 113:25 glom 86:23 go 30:1 31:20 34:8 36:11 55:10 58:7 58:16 62:23,24 64:20 68:15 76:1 76:14 77:22 82:10 89:10 90:21,23 92:14 93:14,21 96:2 97:6 98:21 100:14 101:25 110:24 114:9 126:13 157:24 158:15 162:7 goal 50:18 53:21 54:22 85:21 109:17 goals 126:20 god 27:2 goes 52:12 54:5 67:11 71:24 79:1 104:7 114:2 126:14 166:18 167:22,24 going 24:13 32:25 34:9 36:5 43:21 46:18 48:15 49:15 51:19,20 53:18 54:22 56:1 57:3 60:8,11,13 64:8 65:16 67:21,24 68:1,17 69:8,20 70:2 73:13,20,21 73:21 77:18 79:17 85:20 86:16 87:1 87:7,15,17 88:16 89:4 93:17 96:6 96:19 97:25 98:1 98:3,25,25 99:22 99:25 100:2,3,4,7 102:10,11 103:8</p>	<p>104:21 106:17,18 107:4 110:6 111:14 113:24 117:14 118:23 119:13 121:18 124:14 125:24 126:22 131:25 134:5 138:5,16 148:18 151:24 155:12 161:9 162:4 165:17 167:25 168:1 gold 19:17 goldman 19:18 good 23:2 37:4 47:17 48:6 49:13 52:16 53:8 56:4 58:8 78:22 82:17 89:11 94:5 101:11 102:7 111:1 114:17 118:21 126:9 128:19 134:7 140:16 gotten 38:13 71:21 73:17,18 98:11 99:15 gotto 19:19 govern 56:17 governing 128:15 government 57:11 89:22 114:12 153:17 governmental 2:11 5:4 30:17 47:6 57:9 114:15 116:4 148:15,16 governments 98:5 99:5 governs 122:5 grab 86:15,15,15 grabbing 96:9 granite 78:3</p>	<p>grant 25:3 32:12 64:8 67:13 76:3 108:17 113:14,16 131:4 145:10 150:5 granted 24:9 29:19,20,23,24 30:7,14 31:11 32:10 146:13 169:6 granting 63:23 159:15 grants 63:16 64:10 130:25 grateful 82:23 gratitude 28:1 grave 69:7 great 38:5 90:23 92:2 99:10 115:12 121:7 147:21 158:10 greater 65:7 77:17 95:19,21 greatest 140:16 140:17 green 139:20 greenberg 15:10 greenburg 111:2 gregory 20:3 ground 126:23 145:14 grounds 73:5 78:5 149:5 group 2:11 15:18 16:16 30:20 47:5 47:7 57:9 58:13 77:9 78:9 79:11 81:5 85:15 99:13 156:13 groups 36:7 46:5 growing 98:13 guaranteed 30:1</p>
---	---	---	---

guarantees 123:24	145:14	50:15 58:5 60:10	helped 37:7 59:8
guard 17:8 19:20	hand 27:17 92:5	62:6,14 82:5,15	helpful 36:8 38:8
62:9 63:1,1 64:13	146:2 155:6	102:17 105:19	42:9 80:8 133:19
65:9,24 66:25	handle 96:18	118:8,18 125:24	henry 21:23
67:15,20 68:15	handled 96:7	136:13 137:5,24	hidden 72:5
69:24 72:21 73:3	hannes 21:11	138:10 167:6	higgins 19:21
74:4,22,25 75:21	happen 32:11,11	heard 31:2 45:2	high 58:14 101:13
76:7,18 77:3,15	32:13,14 73:15	55:20 62:4 82:12	133:24 134:15
78:20,23 79:13	97:14 135:9	87:17 93:21 107:9	higher 121:23
80:2,6 81:4 83:2	138:16	136:19 137:4	highlight 66:22
89:18 91:16 92:2	happened 43:20	149:11 167:3	155:14
94:6 96:4,12	138:19	hearing 2:1,1,4,9	highlighted
117:15 120:8,16	happening 32:14	2:14,18,24 3:3,8	147:22
120:23 122:2	75:5	3:15,25 4:10,15	highlights 71:10
guard's 83:3	happens 31:10	4:19 5:1,7,17 6:1	highly 42:14 45:6
96:25 123:18	121:6	6:9,19 7:1,11,21	highsmith 19:22
guess 23:13 25:16	happy 47:13 58:4	7:25 8:5,15 9:1,11	hint 35:11
28:3 73:19 74:5,8	62:5,14 89:12	9:21 10:6,16,21	historic 49:20
74:13,16,22,25	116:14 132:3	11:6,16 12:1,11	50:25
75:1 79:13 80:3	135:2 137:24	12:17 13:1,3 23:4	history 45:18
87:19 89:19 114:9	harbert 15:4	25:9 26:6,21	hit 121:7
125:8 127:20	hard 27:13 30:18	30:24 31:4,5,7	hobson's 94:4
132:25 134:7	46:20 48:10 58:1	37:14 45:1 49:1	hoc 5:1,4 16:9
157:1	66:19 71:25 72:3	50:20 72:14 81:10	47:4,5 58:9 89:22
guessing 127:2	79:12 80:22 91:1	83:10 87:18 92:22	90:18 91:2,6,11
guided 27:16 92:1	92:22 115:3	98:13,23 104:13	94:3,7,14,18
137:16	124:23 154:17	104:15 106:18	159:23
gump 14:11 48:7	158:10 166:23	107:20 108:6	hoffman 19:23
h	harm 37:3 79:18	118:5 121:6	hold 25:15 53:9
h 5:3 21:15	79:21	130:21 134:23	75:11
hadley 16:1	harmed 59:23	135:4,6,10 136:18	holder 64:23
half 46:8 63:6	167:9	137:14 139:20,24	152:24 154:15
64:3,3 65:7 78:21	harold 16:13 20:1	140:1,6 162:9	holding 155:9,15
79:14 85:22 87:15	58:8	hearings 29:5	160:2
91:4 93:11 108:7	hart 18:8	129:17	holdings 154:6
121:16 126:13	hate 85:25	heart 96:2 111:24	holdout 124:12
130:4 142:18	hauer 14:11	heather 12:14,15	hon 1:22
148:12	head 89:4	19:7	honestly 50:21
hallmark 111:17	headphones 25:19	heavy 8:2	74:19 129:1
hallmarks 92:5	health 8:2 15:20	held 13:3 23:4	honor 23:16,20,22
hampshire 41:18	167:13	42:10 129:16	25:4,7 26:3,15
41:22 134:4 142:4	hear 23:18 24:12	help 59:22	27:8 28:2,21
	31:9 47:13,24		29:16 30:24 32:19

[honor - importantly]

Page 22

32:22 33:15,19 34:3 35:9 36:8,15 36:25 41:4,11 42:7 43:24 44:14 44:23 45:14 46:1 46:13,23 47:17 48:1,6 56:12,15 56:23 57:1,16,24 58:3,8,12,17 59:12 60:5,22 61:6 63:1,3 64:9 65:10,24 67:15 68:16,24 69:24 72:21 73:3,19 74:25 75:3 77:3 77:15 78:23 79:13 79:19 80:1,9 81:9 82:1,11 83:2,9,14 86:9,25 87:9 88:22 89:7,11,20 89:24 90:16 91:2 91:11,13,16,19,24 94:14 95:7 96:11 97:7,22 98:22 99:14,20 101:21 102:1,17 103:10 103:25 104:16 105:18 106:3,7,14 106:17 107:5,12 108:1,8,19,24 109:16 110:18,25 111:1,4 112:19 113:21 114:5 117:24 119:25 120:23,24 122:2 123:12,22 124:13 125:6 127:14 128:25 129:13,16 131:6,10,18,25 133:10,19 134:11 134:18 135:15,18 136:12 137:3,5,17 138:2,9,11 139:3	139:7,10,19 140:23 141:19 165:15 166:3 167:2 honor's 45:3 94:21 hope 32:23 59:25 60:10,21 80:10,17 81:13,19 102:12 118:3 128:20 133:11 135:22 168:5 hoped 97:17 hopefully 31:20 38:8 81:16 91:21 95:23 97:2 119:20 121:22,24 125:21 130:7 135:13 141:10 horror 37:25 hospital 114:14 hospitals 28:20 47:5 hours 23:24 50:20 83:10 108:7 hubener 23:15,18 23:20 24:15 25:4 25:7,15,18,23,25 26:3 27:8 28:2 31:6,9 32:19,22 33:15 35:9 36:10 hudson 16:3 huebner 14:8 23:21 24:10 48:25 49:15 52:25 57:3 57:25 63:4,7,13 71:17 80:1,8 82:1 85:8 87:4 91:4 93:3,8 94:15 96:14 102:25 106:19 108:6 111:18 112:19 113:11 119:25	120:5,8 121:14,18 121:20 123:12 127:14,20 131:6 131:10,20 132:11 132:14,18 133:1,6 133:14 134:10 135:12 136:17 140:4,8 165:11,15 165:21 166:3,14 166:18 huge 28:22 50:6,7 165:18 hundred 151:7 hundreds 26:14 128:18 hunter 2:15,25 hurley 19:24 hyde 13:25 170:3 170:8 hypothetical 71:17 104:11 hypotheticals 107:1,6 i i.e. 154:14 157:17 163:25 iacs 112:5,6 icl 42:12 85:8 155:9 identical 28:25 ignorance 107:2,6 ignored 100:24 ii 2:5 15:16 il 16:11 illegal 26:18 imagine 33:16,19 34:3 38:9 46:5 55:12 81:13 154:17 immediate 45:6 51:3 147:24 149:2 151:11 159:14	impact 39:25 50:7 50:14 93:1,2 118:4 138:4 impairment 92:17 impairs 73:9 impediments 102:14 imperils 73:8 implausible 40:19 implement 144:19 implementation 132:1,5 implemented 88:13,13 implementing 91:12 implicate 44:12 156:6 implicated 129:19 implicit 81:23 implies 76:7 139:17 importance 121:7 important 26:21 26:25 27:5,22 28:10,15,21 30:19 34:6 51:1,3 59:18 65:20 91:19 92:18 92:18 97:12 98:20 104:24 119:12,22 121:15 135:3,3,6 136:10 137:24 142:24 145:2 149:15 150:8 155:3 159:10 160:6 162:15 163:13,18 167:1 167:23 168:2,6 importantly 24:7 34:19 40:13 70:13 122:22 125:5 145:11 154:12
--	---	---	--

<p>impose 145:10 146:10 impossible 26:24 132:19 160:18 improper 72:4 improve 30:4 improvement 57:22 improvements 74:3 94:10 include 33:10 64:1,2 72:19 156:21 included 94:21 includes 38:1 53:1 70:8 76:5 157:12 including 29:22 32:3 41:7 44:3,4 45:7,18 46:19 47:2 48:11 53:17 61:10 78:2 81:4 84:3 94:2 119:17 122:23 129:17 142:24 144:8 145:11 146:8 147:1,16 150:3,16 150:19 160:13 162:18 163:7 165:4 168:2 incomprehensible 110:18 inconsistent 97:1 inconvenience 164:10 incorporated 80:24 114:12 166:2 incorporates 152:19 increase 82:23 86:12 115:8 increased 41:21 59:14 70:3 74:1</p>	<p>increases 41:8 42:4 increasing 115:8 incredible 26:13 incremental 30:3 37:6 59:15 142:19 143:21 incurred 143:10 161:8,9 indefatigable 27:17 indiana 12:14 indiana's 12:11 indicate 67:22 97:23 indicated 26:10 70:1 92:2 94:16 indicative 85:3 150:10 indirect 32:2 indiscernible 24:3 24:4,8 25:8,11 27:6 29:7 30:12 30:23 36:6,14 38:15 44:6 48:20 50:4 54:7,11 55:9 55:11,12 56:13 57:2 60:6,10,14 60:17,20,21,22 65:12 67:14 74:9 75:10 76:14 80:6 81:14,15 85:6 86:8 87:7 91:1,8,9 91:14 92:25 93:2 93:9 94:23 100:10 100:18,18 101:8 102:17 104:3,10 109:15,18 112:4 113:3,7 120:1 125:13 127:16 129:1 130:7,18 132:2 133:16,22 134:9,14,15</p>	<p>135:13,14,21 137:10 140:11 141:2 individual 54:12 74:12 101:2 123:23 136:8 150:15 individually 66:18 individuals 161:16 162:7 individuated 123:17 indulge 82:21 83:9 indulgence 87:10 88:9 industries 78:3,4 78:12 117:7 161:1 inference 56:10 initial 94:20 inject 100:7 injunction 66:20 93:10 129:24 131:2,3 133:5 141:6 148:3,6,8 165:14 injunctive 34:21 injury 50:15 56:22 83:24 101:19 110:23 154:6 162:8,18,20 162:20 inordinately 124:4 inquiry 42:8 inside 69:10 79:18 79:23 insider 111:18 insisted 38:22 instance 52:5 instant 40:6</p>	<p>institution 30:7 institutions 30:11 50:12 142:25 instructive 42:14 instrumental 91:12 insurers 156:5 integral 76:11 integrity 92:19 intellectually 129:4 intended 112:16 120:20 165:22 intensity 48:12 51:12,19 52:10 inter 56:3,17 intercreditor 72:1 74:7 77:24 91:13 100:10 101:11 intercreditors 123:25 interest 64:23,24 64:25 79:15 100:11,19 105:23 143:16 152:24,25 153:1 154:15,17 156:11 158:10 164:10,11 166:24 interested 88:21 111:13 interesting 90:2 93:3 122:10 129:5 interests 49:2,10 54:6 57:17 156:25 interpret 67:18 interpretation 86:21 156:23 interrupt 32:8 98:17 112:14 126:25 interrupted 140:5 intra 53:25</p>
---	---	--	---

introducing 53:24 invalidate 149:3 invested 58:2 investment 71:14 investments 84:11 investor 85:6 invites 69:9 involuntary 145:10 involve 40:22 94:12 involved 72:9,10 involvement 126:22 iridium 154:9 163:24 164:6 165:1 ironed 60:18 irony 124:5 irritating 110:1 irve 19:18 isaacs 10:16,19 island 114:13 israel 16:13 20:1 58:8,9 issacs 19:25 issue 29:20 39:14 43:16 46:9 50:9 53:23 54:5,5,12 64:16,16 65:16 67:19 68:5,7,13 71:1,3,23,25 74:8 75:17 77:2 78:16 81:20 83:1 85:4 86:6 87:12,14 88:3,8,10,11 89:4 90:5,13 92:12 96:2,4 97:8 98:14 98:14,16 99:14,17 101:13,14,14 105:3,16 111:12 115:5 117:6 119:3 123:15 126:3,18	127:16 128:1,19 130:18 131:17 135:14 141:1,2 150:7,24 153:7 154:24 155:25 157:15 159:21 161:18,21 issued 129:20 issues 31:14,15,16 35:13 38:12 56:17 56:18 81:1 88:19 90:1 98:20 100:12 100:13 103:23 104:1,10 106:4,25 107:3 115:10 118:5 120:16 123:9 124:14 125:13 126:10,14 126:19 127:21 128:8,10 130:1 140:14 141:16 149:22 150:21 it'll 125:12 137:24 items 76:1 120:3 i'm 117:16 136:13 136:19	jevic 72:8,9 103:16 155:15 jill 17:18 job 111:7 140:16 john 17:8 19:20 63:1 johns 117:4 161:25 joinder 3:18 4:3 4:20 5:10,20 6:1 6:12,19 7:4,14 8:8 8:18 9:4,14,24 10:9,24 11:9,19 12:4,12,18 28:24 63:5 82:6 joinders 28:19 82:7,9 120:12,14 120:18 joined 47:3,5 joining 64:17 89:17 jointly 1:7 jones 17:22 20:2 jordan 22:4 joseph 2:5 15:16 20:3 21:3,21,24 jr 6:23 judge 1:23 23:2 27:17,18,25 34:23 35:12 40:15 57:25 59:7 62:12 70:21 80:18 82:15,20 85:25 90:19 91:7 95:20 114:9 116:8 116:23 117:16,19 128:12 135:1 138:19,20 155:13 156:13 167:5 judgment 125:4 141:1 149:12 judgments 115:11 judicial 113:1	julius 19:3 jump 28:3 55:3,23 jumping 55:16 juncture 124:24 jurisdiction 34:25 43:24 44:5,21 65:13 66:5 75:15 81:21 105:7,16 110:8 127:21 128:11,14,16 149:9,23 150:9 151:3,9 jurisdictional 81:2 149:6 150:4 jurisdictions 60:3 103:6 justice 14:19 17:1 102:2 103:19 129:23 155:16 justification 165:3 justified 124:10 justify 109:17
	j j 2:15,25 3:6,12 4:23 18:1 19:17 19:21 21:6,16,19 jacquelyn 22:7 james 4:16,17 17:23 18:22 20:14 21:10 jan 19:23 jasmine 18:16 jason 18:20 jay 18:15 jeff 21:8 jeffrey 20:12 21:6 jennifer 20:24 jersey 114:15,16		k kaminetzky 20:4 kane 117:4 161:24 kansas 8:22 karl 21:2 katheen 20:18 katherine 21:1 kathryn 18:17 21:9 keep 25:25 30:5 124:25 132:22 keeps 159:9 keepwells 123:25 kelly 22:1 ken 6:7 kenan 2:21 21:14 kenneth 5:3 14:25 89:21 kentucky 7:19

[kept - lines]

Page 25

kept 46:17	knudson 22:7	lawrence 18:9	leonard 20:9
kesselman 20:5	kramer 89:21	lawsuit 72:10	letter 28:4 29:11
kevin 16:20 58:12	I	lawyers 114:24	44:15
key 78:9,9 87:8,11	I 17:24 19:8,11	lay 42:9	level 58:14 69:9
136:24 159:23	20:15	layering 39:23	73:17 79:7 95:21
kill 105:25	l.p. 1:6 3:6,13	layn 70:21,21	114:18
kind 24:11 42:17	labored 130:3	lc's 123:25	levenfeld 16:8
60:7 65:10 68:15	laborers 8:2	leadership 4:13	leventhal 20:10
68:18,23 75:3,8	laid 56:10,11	leading 153:23	leverage 79:8,11
92:24 96:2,7,8	100:4 127:10	leads 123:20	79:11 160:16
101:13 104:22	141:19 163:23	leagues 43:2,3	levin 89:21
125:25	lake 2:16	leave 108:19	lexington 14:5
kinds 97:11	land 104:8	121:9	lexis 117:8 156:2
klein 20:6	landmark 49:17	leaves 78:14	161:23
know 25:18 26:9	language 34:17	leaving 51:6 155:1	li 20:11
26:14,22 27:2	82:21 156:20	ledanski 13:25	liability 168:4
28:6,23 29:2,9	large 26:21 84:2	170:3,8	license 112:25
33:16 34:24 47:11	86:13 144:21	ledyard 17:10	lie 121:8
54:1 56:13 60:16	largely 63:5 69:20	82:18	liesemer 20:12
60:25 61:2 62:16	97:3	lees 20:7	lieu 142:20
67:23,24 68:10,24	larger 37:19	lefkon 20:8	life 68:5 115:1
70:1,10 71:2 72:7	128:8 133:22	left 42:16 57:7	128:4 131:11
72:8 73:11,12,15	lasalle 16:10	62:7 104:10	135:25
73:16 74:5,6,13	laudable 37:16	123:15	light 142:8 160:16
74:14 75:5,6,11	59:9	legal 27:1 30:11	167:20
76:21,25 78:9	laughable 151:8	39:6 45:20 54:14	likelihood 118:19
79:14,16,18 82:5	laura 21:20	57:2,16 70:23	164:9
82:10 83:22 85:2	law 15:1,18 28:25	83:10 86:16 87:3	likes 148:22
89:10 90:9,18,20	35:15 42:8 44:3,4	87:5 98:18 102:14	likewise 37:10
91:1,2,15 93:8,16	46:2 54:17 67:18	113:5 121:22	limit 138:4
98:12 99:15	71:9 74:2 78:2	140:18 150:7	limited 2:4 5:1
103:16 106:4,5,5	109:25 110:3	151:24 153:12	44:1 78:24 82:7
106:11 107:10	113:1,5,18 114:4	166:9 170:20	142:6 146:7
108:4 113:19	116:16 122:21	legality 37:17	158:25
117:21 118:19	125:14 126:19	127:25	limits 159:24
124:16 125:15	128:15 130:5	legitimate 113:3	line 42:15 51:16
126:6 134:11,12	141:6 152:14,23	114:2	55:3,23 113:4
136:5 137:16	155:2 156:8	lehman 160:3	128:14 169:4
knowing 65:6	158:12 160:25	length 33:24 81:5	lined 80:17
149:1	162:8 164:5 165:1	164:14,19	lines 25:10 26:4
knows 23:23 86:9	lawful 37:20 38:7	lengthy 116:11	51:25 89:3 145:23
91:11 93:8 99:20	39:2	129:16	149:20 159:15
124:16			

<p>liquidation 32:4 141:15 list 146:4 154:16 listed 52:21 117:1 listening 26:15 107:19 136:2 listing 29:12 115:24 lite 15:10 111:2 literally 27:11 62:7 78:11 86:12 132:19 litigants 38:5,6 litigate 84:16,17 litigating 130:16 litigation 5:5 30:13 84:3 164:9 litigation's 164:8 little 63:19 125:2 126:16 151:6,7 152:2 live 167:25 lived 52:11 lives 30:4 50:22 50:22 52:7 73:14 80:5 125:22 128:18,19,21 140:22 llc 16:8 163:24 llp 14:3,11 16:1 17:10 local 8:2 15:20 98:5 localities 126:23 location 13:4 lock 101:17 locked 38:21 locking 121:22 165:4 locks 121:13,16 151:12,13 logic 34:22</p>	<p>long 31:9,20 34:15 37:4 41:23 46:20 54:15 81:6 85:22 114:12 115:24 119:5 157:2,7 longer 38:14 130:15 141:16 look 65:18 70:6 77:18 87:18 88:12 105:23 112:6 123:7 125:23 128:12 131:25 168:7 looked 52:2 53:7 124:23 133:4 134:24 155:24 looking 53:10 54:21 79:23,24 99:24 101:5 132:19 133:8 lose 29:23 89:15 94:5 loss 141:15 lost 32:7 43:17 47:11 58:20 lot 31:3 34:14 53:4 78:18 81:17 83:16 84:7,8 85:1 92:14 99:20 131:11 louis 18:23 louisiana 12:8 love 114:25 115:1 115:2,2 136:5 loved 50:23 low 133:19 lower 67:8 149:11 lowering 32:4 lp 23:3 lucas 21:15</p>	<p>m m 12:14 17:22 19:7 20:2,16 ma'am 110:4 maclay 16:20 58:12,12,17 maclay's 99:12 mad 72:21,23,24 magali 19:16 main 124:3 maintainable 83:8 maintains 107:16 major 92:15 102:6 152:1 majority 28:13 29:6,14 36:16 124:4 158:9 making 26:16,17 68:10 79:2 85:9 90:16 107:6 117:16 157:2 mallinckrodt 156:1 man's 104:8 management 71:14 manner 54:16 92:9 148:23 manville 67:6 117:4 161:25 mara 20:10 marc 20:5 21:18 21:24 march 1:16 2:1 170:25 maria 7:21,23 marion 18:4,11 mark 8:1 15:24 marshall 14:8 23:20 127:21,22 128:5,9 martin 22:5</p>	<p>marvin 6:23 maryland 52:11 massachusetts 53:1 massive 32:2 40:16 79:18 93:24 massively 40:24 86:4 master 143:24 144:23 masumoto 18:7 material 28:12 30:14 46:7 94:11 119:10 142:23 146:12 materially 41:8 46:21 141:14 150:19 162:11 matter 24:8 25:8 25:8 31:10 34:24 37:16 59:20 68:13 74:23 86:1 87:2 92:20 109:24 111:21 112:10 123:19 125:5 149:10 matters 23:7 109:24,25 133:16 149:16 matthew 19:17 maura 20:18 maximum 30:2 74:20 92:9 mbt 54:10 mccarthy 20:13 mcclammy 20:14 mcclloy 16:1 mcgaha 20:15 mclean 78:2,3,12 161:1 mcmahon 34:24 80:18 91:7 95:20</p>
--	---	---	--

mcmahon's 35:12 128:13	143:4 164:20 166:21	46:11 50:3 51:17 56:22 69:2 74:21	mistake 42:17 166:4,14
mcnulty 20:16	mediator's 89:3	77:13,15 78:22	misunderstand
mdl 79:12 114:19	135:19 164:17	83:18 87:16,20,23	36:12
mdt 41:21 99:25	mediators 60:16	93:6,19 103:14,15	misunderstanding
100:21 112:2	meet 67:14	104:3 112:3	37:9 44:1
mean 53:6,7 68:5	megan 18:3	114:13 116:3	mittell 18:15
68:12 72:23 73:3	meises 20:17	121:21 123:4	19:24
73:10,19 74:8,19	melanie 19:8	125:11,19 129:19	mitigate 63:19
76:9 77:18 86:15	melissa 17:24	142:19,22 143:10	model 43:9,14
97:13 98:17	member 61:12	143:12 144:6,22	94:9
105:21 110:14	66:5 143:6 144:9	145:4 148:11	modest 46:10 81:8
112:20 113:9	members 66:15	151:7,7 154:20	125:8 147:2 165:6
121:15,17 127:17	66:18,22 114:11	160:23 161:8,9	modification
130:20 139:5	118:13 147:13	mind 28:13 34:7	75:10 104:25
meaning 137:22	155:7 167:7	72:13 156:17	106:24 119:10
156:9	membership	mindedness 59:4	146:11,13 148:25
meaningful 50:14	30:17	mine 34:16	152:13 153:19
51:8	memory 135:19	136:11	159:3,4 162:10,12
means 45:14 60:1	mention 27:5	mineola 170:23	162:13 165:10
78:8 109:17 138:3	mentioned 51:10	mini 128:8	modifications
138:4 154:18	68:15,22 134:22	minimis 44:8	49:12 75:15 94:9
meant 66:21	merely 33:23	minimize 120:6	modified 116:14
69:13,15 87:1	148:25	minimum 30:1	154:14 162:25
165:19	merit 41:1	minor 77:23	modify 43:8
mechanics 36:2	merits 28:3 83:19	80:20	112:16 145:17,20
41:10 42:5 128:22	84:16,17 121:24	minuscule 161:4	152:10,21 153:8
mechanisms 66:8	150:24 164:1	minute 62:10	modifying 114:22
66:10	metromedia 67:6	68:21,22	module 133:17
mechanistic 80:15	mic 25:5	minutes 28:6	moment 90:17
mechanistically	michael 18:14	29:16 33:24 36:4	monaghan 20:18
39:20	20:22 21:7	40:11 112:23	139:8,10,16
mediation 24:23	michele 20:17	120:2 139:21	monetary 142:23
24:24 27:22,23	microphone 24:12	mirror 60:9	164:3
30:20 38:10 40:14	31:1	mischaracteriza...	money 38:6 41:12
58:1 64:8,11,12	midst 90:4,22	44:1	41:21 43:2 49:25
70:20,20 78:25	milbank 16:1	mischaracterize	51:17,18,20 52:3
135:2,17 136:24	138:9	36:13	52:15,20 54:9,15
139:1 142:10,12	milburn 17:10	misery 37:3	54:21,22 55:3,4
162:16 164:17,18	82:18	missing 135:8	68:22,23,25 69:1
167:6	million 30:2,21	mississippi 5:24	69:17 71:10 72:11
mediator 134:17	36:5,22 38:12,23	missouri 5:14	73:13,13 78:18
136:23 142:11	38:25 39:1 42:5		83:18 84:9,13,19

[money - new]

Page 28

85:19 86:23 102:5 102:9 103:17,22 104:5 105:24 107:3 108:23 109:15 115:8,14 118:15,16 122:4 122:18,19,20 125:11 126:5,6,8 126:17 128:18,21 129:4 131:14 132:20 140:22 144:5,21 148:18 156:3,22,23 162:3 163:16,16 money's 72:20 79:24 83:1 monies 97:25 98:1 98:3,24 99:1 163:12 montana 10:13 monthly 46:8 months 31:23 49:23 58:3 61:5 72:25 123:14 morning 27:20,20 27:21 103:4 166:25 morrisey 12:21 82:18 motion 2:9,14,18 2:19,24 3:3,3,8,8 3:10,15,18,25 4:3 4:10,15,19,20 5:1 5:2,7,10,17,20 6:1 6:2,9,12,20 7:1,4 7:11,14,21,22,25 8:5,8,15,18 9:1,4 9:11,14,21,24 10:6,9,16,21,24 11:6,9,16,19 12:1 12:4,12,18 23:8 23:10,10,13,22,25 24:7,17,18,19	25:3 27:8,10 29:24 32:10,13 40:6 47:2,2,7,8 49:5,7 62:5 63:13 63:16,18,23 75:23 75:25 80:11,19 86:18 89:25 94:17 94:19,20 95:2,11 96:15 105:1 106:25 124:16 125:7 132:10 135:7 136:4,5,6 136:18 137:2 140:7 141:2,22,25 143:17,19 145:25 146:13,14,15,19 149:3,21 150:3,5 150:7,11 151:3 152:2,2,10,16 153:5,8,19,20 154:25 157:19 158:19 159:15,16 169:6 motivated 59:4 motivating 129:9 move 68:16 97:2 107:10,12 108:5 126:11 166:8 moved 121:3 moving 63:12 78:20 msge 16:16 28:11 47:7 58:13 77:6 99:13 multi 2:11 47:6 multiple 30:16 31:14 32:2 45:6 70:1,2,3 108:16 165:19 multiplier 163:7 multiyear 60:1 mulvihill 17:20	municipal 111:3 municipalities 161:13 municipality 2:6 15:11 munis 28:12 murray 20:19 museums 50:12 mute 23:14 mutiny 126:3 mutual 120:21 myriad 40:18 n n 14:1 16:10 23:1 169:1 170:1 name 30:9 50:13 naming 30:12 142:25 nan 14:24 102:1 narrow 29:19 114:20 160:2 narrowed 44:17 nas 16:9 28:19 47:4,4 58:9 nassau 3:1 nation 2:7 15:12 111:3 national 70:25 114:19 117:7 161:22 nations 161:13 native 148:20 nature 119:21 148:5 ncsg 94:8 nearby 26:1 nebraska 11:23 52:7,8 necessarily 97:7 107:22 137:19 153:3 163:10 necessary 85:17	need 24:23 30:16 49:1 55:9 62:18 68:8 74:3 81:12 109:20 125:15 127:22 128:12 131:5 133:10,12 135:15 needed 73:13 105:2 needs 54:17 85:23 85:24 125:15 127:11 negless 20:20 negotiate 66:18 67:12 77:23 78:9 negotiated 40:3 40:14 70:19 94:9 94:10 95:16 101:11 162:3 negotiating 60:2 65:5 72:25 79:12 99:20 negotiation 63:24 67:25 68:1,3 70:24 142:14 negotiations 27:14 53:25 60:15 61:2 64:2 65:1 66:24,25 67:4,5 164:20 neiger 18:6 neither 37:15 39:8 42:25 107:7 net 112:4 134:11 nets 52:20 never 25:19 31:2 38:25 39:25 130:2 131:6,16,17 nevertheless 43:1 149:10 153:21 new 1:2 14:6,15 14:22 16:4 17:13 35:20 37:11 41:1
---	--	--	--

<p>41:12,18,22 49:25 53:1 100:7 105:1 105:1 114:15,15 125:11 134:4 142:4 145:13 newark 15:14 news 126:9,10 newspapers 38:11 nicole 20:9 night 91:4 nine 27:11,15 31:11,19 32:21 33:3,5 36:3,23 37:23 38:11,14,22 41:18,22 45:8 48:23 51:2,3,17 52:12,24 54:2,2,3 54:9,17 55:6,21 59:8 61:12 63:24 63:25 66:3 67:21 69:3 70:5 71:2,5 74:10 75:2 77:5 83:17 86:17 93:6 95:16 97:19 98:6 102:7 105:9,13 111:6 114:24 115:14 116:2 121:10 122:17 123:17 124:2 126:8,15 127:15 128:1,17 130:8 134:4 137:20 142:1,9 144:9 145:11 146:20,22 147:14 153:14 160:16 162:5,16 nine's 45:25 nj 15:14 noat 41:15 48:24 56:6,19 59:2 60:2 60:9 61:3 74:1 76:5 95:17 100:3 119:13 134:5</p>	<p>143:24 144:23,25 162:4 163:20 noble 109:17 nobody's 102:20 108:14 non 51:6 54:1 57:9 77:21 113:5 113:5,18 114:4 116:4 142:23 148:16 152:22 155:21 156:22 157:17,17 nonconsensual 57:14 nonfederal 153:17 nonlegal 57:19 nonmonetary 164:4 north 10:3 15:5 53:2 155:22 noses 53:9 notably 45:13 note 28:21 31:1 43:16 46:2,14 53:16 54:19 56:9 61:8 63:6 86:17 114:23 124:5 128:6,12 129:13 130:18 149:24 159:16 161:3 noted 26:15 28:8 29:17 82:7,8 101:9 118:2 128:14 147:6 150:10 156:3,8 notes 132:2 135:18 notice 2:1 3:9 23:9 24:1,20 121:3 notifying 45:7</p>	<p>noting 63:3 notion 40:3,13 notwithstanding 91:21 92:11 152:22 november 129:20 number 25:9 28:22 40:5 43:24 44:23 45:25 59:11 59:12 62:16,24 84:1,2 90:17 92:7 92:8 114:14,14,17 115:6 120:23 123:15 126:2 133:15 140:9,17 147:21 149:5 numbered 59:14 65:22 numbers 79:23 133:18 nw 16:17 ny 1:14 14:6,15,22 15:19 16:4 17:13 170:23</p>	<p>73:4 74:14 79:10 82:23 84:25 116:18 149:4 objection 2:14,18 2:24 3:15,18,25 4:3,10,15,19,20 5:1,2,7,10,17,20 6:1,2,9,12,20 7:1 7:4,11,14,21,21 7:25 8:5,8,15,18 9:1,4,11,14,21,24 10:6,9,16,16,21 10:24 11:6,9,16 11:19 12:1,4,11 12:11,13,17,17,19 13:1 36:16 41:14 43:19 54:11,14 55:2 62:19,23 64:18 65:2,3,4,11 67:13,22 71:8 73:18 82:7 87:4,5 89:9 94:18,23 97:23 102:22 110:21,22 111:24 113:10 114:20,22 115:17,23 116:13 117:22,23 120:18 123:2 125:22 142:12 161:20 162:7 objections 23:23 24:4,6,7,17,18 28:5,7 29:12 33:22 36:12 51:9 52:18 54:8 62:15 62:17 63:4 71:6 71:19 94:20 95:8 95:10,11 102:20 110:20,23 117:23 129:9 142:1 143:18 148:14 153:2 161:11,15 161:17,18</p>
		<p>o</p>	
		<p>o 1:21 23:1 56:6 170:1 obaldo 6:5 20:23 object 28:24 29:8 29:9 53:9 63:10 81:13 86:6 118:20 125:18 158:3 162:13 objected 23:22 53:17 63:7 85:1 98:7 109:15 111:12 115:14 121:3 122:16 123:1 142:4 145:14 159:13 objecting 29:2 52:19,25 54:3 57:6 64:3 70:18</p>	

[objector - original]

Page 30

objector 33:21 43:17,19 47:15 62:18 81:3 122:23	occasions 70:1,3 occur 63:21 68:2 143:20 149:6 151:15 162:25	opening 46:14 81:5 openly 50:21 openness 92:10 operating 85:19 154:9 163:24 operative 166:17 opinion 45:1 87:3 87:3 88:15 103:20 151:17 155:16 159:22 opioid 30:4 36:22 51:21 52:3,16 53:22 54:1,1,16 57:12 59:17 61:10 73:6 85:16 86:3 86:14 87:16 102:6 109:16 114:19 118:12,12,23 119:17 142:22 144:1,5,7 148:13 150:16 160:11	7:2,6,12,16 8:6,10 8:16,20 9:2,6,12 9:16,22 10:1,7,11 10:18,22 11:1,7 11:11,17,21 12:2 12:6 23:9,11 29:23 32:15,23 33:8,9,10,17,18 33:20,22 34:2,7 34:11,19 35:16 37:23 44:11 45:5 45:22 49:9 61:25 63:15 66:4,4,13 66:17 69:24 75:16 75:18,19 76:9,18 80:14,16 81:19 85:11 101:16 107:21 108:2,9 112:12,17,20 113:4,13 124:6,16 124:19 125:7 126:8 127:5 129:12,15,20,21 130:9,22 131:5,23 132:10,16 133:3 141:22 145:8,18 146:6 147:9,19 155:19 156:18 165:11,14 166:4 166:10,14
objectors 29:22 37:5,10,16 39:6 39:10 40:6,21 43:6,17 44:13,24 45:11,24 46:6,20 46:23 62:6,14,24 80:5 117:20 124:15 133:22 140:11 148:10 153:2 154:18 159:13,16 161:19 162:2 166:21	occurrence 151:24 odds 96:21 offensive 37:3 offering 157:6 office 6:24 17:3 57:14 62:8 102:2 official 14:12 26:22 28:16 47:3 48:8 ohio 11:13 oil 145:22 okay 23:2 24:10 25:7,23,24 26:2 27:7 34:13 46:25 47:13 48:5,6 56:2 56:25 57:1 58:4 58:11,16,17 61:8 62:4,12 79:20 80:7,12 81:22 82:4 87:8 89:8,14 89:18 101:20,23 110:19 113:8 114:7 117:20 119:1 120:4,7 127:19 131:19 132:17,24 137:3,7 137:9,11,12 138:8 139:5,8 140:2 141:21	opportunity 24:5 72:6 84:9 89:16 89:23 101:22 157:9 158:6 167:2 opposal 91:25 oppose 52:20 opposed 56:7 90:8 107:2 110:5 113:25 120:13 144:14 164:7 opposing 53:4 opposite 74:16 opposition 2:4,18 111:8 options 149:25 oral 46:23 117:22 148:4 order 2:19 3:4,9 3:11,16,20 4:1,5 4:10,22 5:8,12,18 5:22 6:4,10,14,22	ordered 38:9 142:10 orders 33:5,12 34:14,15 35:18 46:7 77:6 113:15 114:3 130:24 133:4 147:21 165:13 organization 30:8 organizations 143:1 original 163:18
objects 36:16 obligations 140:18 151:15 158:25 observation 93:4 observations 59:20 90:17 obtain 30:16 69:12 130:16 obtained 30:19 64:5 115:14 160:15,16 obtaining 146:16 obviated 49:1 obvious 121:10 obviously 26:6,15 28:4 29:3,4 34:23 36:11 48:25 59:18 60:16,19,25 61:18 69:13 75:8 81:10 83:5 100:25 111:16 113:2 115:18 116:13 126:10 130:1 151:25 160:20 166:20 167:19 occasion 70:3	old 72:12 170:21 once 44:4,4 122:6 one's 77:17 ones 44:6 50:23 102:16 oneself 96:9 onset 59:5 open 72:13 77:23 83:6 94:16 129:18		

osus 128:14	p	76:11 81:5 91:15	146:19,25 147:7
ought 84:22 86:10	p 14:1,1 23:1	99:3 126:23	147:14 150:12
118:16	p.m. 1:17 168:9	127:10,11 131:14	151:10 155:9
outcome 97:16	page 65:22 117:9	135:17 136:22,25	156:5,5 157:8
outline 107:8	155:12 161:24	137:14,24 138:16	158:7,9 162:17
outlined 149:1,2	163:24 169:4	138:18,25 139:23	163:1 164:11
159:1	pages 29:12 65:22	155:18,19 163:10	165:4
outset 26:10 44:7	156:2	parte 3:8	partners 78:3
48:9 120:9	paid 36:6 37:12	participate 56:5	partnership 67:7
outside 51:15 69:8	69:2,3 72:11 73:8	participated 91:6	parts 152:1
79:18,21 94:18	84:14 93:6 103:18	98:7	party 23:22 37:6
153:13	114:25 115:4,9	participating	38:16 39:24 40:1
outstanding 94:1	123:5 131:6,8,13	31:13	41:16 42:16,18
outweigh 81:14	131:16 132:20,21	participation	57:7,14 58:22
overall 61:14,22	143:22,24 144:14	25:12 26:5 29:5	67:3,9 70:14 71:7
overblows 63:13	155:7 156:4,5	114:18	88:2 91:23 92:12
63:22	159:21	particular 64:23	99:25 100:7
overdose 52:13	pain 136:1	64:24,25 75:17	112:12 121:25
overdoses 118:12	painful 118:9	99:19 101:17	123:9 124:9,12
overlap 145:25	140:14	129:15 152:24,25	143:15 145:7,10
overlooked 52:23	paper 58:17	153:1 154:15,16	146:10 147:17
override 114:3	papers 40:11	156:11	150:14,24 157:21
overrule 34:23	43:15,22 44:3,21	particularly	158:5
overruled 65:13	46:1 47:9 48:15	70:16 96:5 161:12	party's 44:19
oversaw 59:7	49:19 58:10,24	parties 23:25 26:7	pass 71:13
overstate 26:24	79:19 86:18 99:16	27:9 28:22,23	passionately
overturning	101:22 141:10,19	29:2 33:17 36:7	121:4 124:8 128:9
113:18	paragraph 35:16	37:1,2,4 39:3	passu 55:4,22
overwhelming	35:24 59:14 65:21	40:15 42:11 43:1	74:8
36:16 37:20 92:12	76:9 80:14 103:3	43:2,12,12 45:6	path 96:13,24
owen 20:8	103:19 117:10	46:19 58:18 59:19	pathway 67:2
owned 123:4,16	129:24 131:8,17	61:4 64:12 65:5	131:23
oxycontin 50:22	132:5,7,9 135:18	70:10 90:7 91:1	patrick 12:21
52:8 102:6 134:24	162:1 166:9	92:1,4 95:18	20:22 82:18
167:10	parameters 127:9	96:10 99:24	paul 2:21 21:14
ozment 4:16,17	paramount	100:19 101:1	paxton 6:7
15:1,8 117:24,24	164:10	102:7 103:2,4,6	pay 35:5 36:19
119:7,24	pari 55:4,22 74:8	109:20 120:5,17	46:4,10 66:6 69:6
o'connor 20:21	paris 18:3 21:7	123:15,17,24	70:2 93:14 101:19
o'neil 20:22	park 14:14	127:25 128:5	112:1 127:12
	parse 75:17	135:17 136:24	131:22 142:19
	part 23:25 55:13	142:6,10,11,15	147:6 151:21
	73:4,17 75:1	143:9,22 144:1,15	

<p>paying 38:6 43:1 70:5 93:19 106:23 111:19,20 122:18 122:20</p> <p>payment 36:3 37:18 38:12,18,19 38:23 39:1,2 42:16,17 45:25 50:5 55:10 56:21 65:12,13 66:14,14 66:22 74:1 78:19 96:22 98:18 101:6 101:7 121:21 129:21 143:7,8 144:16 157:23 159:13,17,25 160:3,13 166:6</p> <p>payments 30:3 33:4 35:25 37:1 38:2 39:8,10,16 39:17,18,19,21 40:22,22 42:10,20 43:6,8,11,12 46:7 51:15 55:21 56:8 56:9 64:15 66:2 71:13 93:22 94:12 96:19 99:22 100:1 100:2,3,4,14,15 100:23 129:7 132:7 133:20,21 142:15 155:4 166:8</p> <p>peabody 157:5</p> <p>peacock 20:24</p> <p>pearlstein 16:8</p> <p>pending 77:24 92:21 145:25 150:6 156:19</p> <p>pennsylvania 53:2</p> <p>penny 30:5 41:18</p> <p>penumbra 124:14</p>	<p>people 24:5 26:14 26:14,23 30:25 34:10 52:1 58:19 59:25 77:9 81:17 81:20 82:5 83:16 87:18,24 98:19 101:2 105:23 107:4 109:6,8 118:10,11 119:5 125:15 127:3 133:8,16 134:23 135:23 137:4,7 161:16 166:23 167:9,17,21,23</p> <p>peppercorn 35:11</p> <p>perceived 120:22</p> <p>percent 37:11 39:24 68:25 77:17 90:7,8 93:16 96:21 112:3 114:18 119:12 133:24 134:1,8,9 144:20,20 148:19 158:14</p> <p>percentage 90:14 144:15 158:16</p> <p>perfect 31:6 127:1</p> <p>perfectly 40:11 106:23 137:15 140:13</p> <p>performance 151:15 158:25</p> <p>period 24:20 50:20 79:1 107:25 109:11</p> <p>permissible 43:3</p> <p>permission 166:5</p> <p>permit 43:1 124:19</p> <p>permits 113:4</p> <p>permitted 155:18</p> <p>permitting 35:20</p>	<p>person 52:11 127:6 167:14</p> <p>personal 26:12 50:15 56:22 83:24 101:19 110:23 162:8,18,20,20</p> <p>personally 58:2</p> <p>perspective 51:20 54:15</p> <p>pertain 149:16</p> <p>pest 78:8</p> <p>peter 4:12 19:9</p> <p>pharma 1:6 3:6 3:13 23:3</p> <p>phillips 2:10 70:21</p> <p>phone 25:10 26:4</p> <p>photograph 167:24</p> <p>phrased 32:8</p> <p>pi 52:6 54:25 55:17 129:14 130:19</p> <p>pick 83:4</p> <p>picked 24:14</p> <p>picture 47:11 59:11,12</p> <p>piercing 70:12</p> <p>pig 76:25 153:24</p> <p>pike 60:20</p> <p>pis 53:17 100:4</p> <p>pl 17:5</p> <p>place 93:11 98:4 99:7 128:10 130:11</p> <p>places 108:16</p> <p>plain 156:9,20,24</p> <p>plainly 41:4</p> <p>plains 1:14</p> <p>plan 28:15 29:24 30:16 31:12 32:16 32:16 33:1 35:8 35:21 36:21,21,21</p>	<p>37:13,24 38:15,18 38:21 39:3,4,9,11 39:21 40:8,10,17 40:23,24 41:1,3,9 41:17,19 42:21 43:5,7,9,14 44:10 44:15,20 45:17,20 49:22 50:8,10 51:16 55:18 56:8 57:8,11 61:17,17 62:1,2 63:20 64:16,22 65:3,8 66:11 67:1,3,5,11 68:7 69:1 70:14 71:22 72:12 73:20 73:25 74:2,11,20 74:21 75:4,7,24 75:24 76:5,6,12 77:22 78:7 79:10 80:12,20 85:11 86:7 87:22,23 88:2,3,18,19 91:5 91:15,18,19,20 92:5,6,8,13,17 93:15,18,20 94:1 94:10 95:7,17 96:14,16 97:5,21 99:3,25 100:17 101:3 102:18 103:9 104:8,13,14 104:16,19,25 105:1,24 106:12 106:19,24 108:18 109:21 115:15 121:23 124:20,21 127:5 129:3 131:24 132:16 142:3,13,16,21,22 143:25 144:17,18 145:3,7,8,17,19 145:20 146:1,10 146:12 147:3,16 148:1,25 151:23</p>
--	--	--	--

152:3,7,7,10,13 152:21,23 153:8 153:19,23 154:19 154:22 155:25 156:10,18 158:2,4 158:4,4,6,8,22,22 158:23,24 159:1,3 159:6,7,8,10,11 160:17 162:8,10 162:12,21,25 163:3,21 165:10 165:14 166:11 plan's 39:11 41:16 42:3,5 44:18 76:15 128:22 planning 139:13 150:19 play 68:18 played 102:6 140:6 plaza 15:4 plc 156:1 pleading 38:16 62:21 pleadings 47:1 89:25 please 63:1 83:8,9 136:7 pleased 52:2 pleases 46:13 pledged 69:25 plurality 28:14 plus 53:4 63:20 69:3 83:17 podium 34:10 pohl 18:5 20:25 point 33:8 35:17 42:15 43:16,23 46:2 50:6 52:14 52:15 53:11 55:14 62:14 63:4 65:20 66:19 68:23 70:15 74:25 75:3,13,19	77:24 79:2 83:4 84:18 85:23,23 88:20 89:1 94:21 101:2 102:19 104:2,7 105:22 114:1,2 117:6 119:2,5 121:11 122:22 123:13,18 126:4,25 127:2 133:15 134:7,10 134:21 136:24 139:12 140:7 151:7 pointed 49:19 53:1 122:25 points 51:24 77:23 90:10 117:13,14 124:15 126:2 poke 76:25 153:24 police 103:5 policies 30:12 policy 73:15 123:19,22 124:11 154:2,3,6 polished 83:12 political 48:13 59:23 60:7 polk 14:3 23:21 56:16 poly 25:20 poor 96:8 popping 135:13 populate 50:16 population 86:9 86:13 114:13 populations 115:6 porter 21:1 portion 26:6 32:9 102:22 110:15 143:23 144:21 162:6	position 53:13,15 74:16 85:3,7 97:5 99:12,12 111:11 114:17 139:17 positioned 124:3 positions 58:18 positive 48:20 60:24 142:8 possibility 37:9 97:2 164:8 possible 26:5,23 30:12 34:8 39:13 63:22 74:13,16 92:4,10 125:2 126:21 154:17 possibly 34:24 50:24 post 90:3 92:20 posted 99:21 posting 27:2 potential 31:16 40:1 50:9 109:5,7 141:14 potentially 31:22 33:24 49:10 83:7 85:13 87:6,12 96:13 power 113:15 145:10 146:9 157:20 159:25 practicalities 138:14 pre 48:23 54:10 54:18 precatory 82:21 precede 160:20 precedent 45:13 45:19,21 precisely 105:15 121:4 precision 138:14 preclude 66:24 104:23	predecessor 27:22 predicate 33:3 predictability 96:6 preferable 54:13 preference 37:16 preferences 113:19 preferred 37:11 48:22 preis 14:17 47:17 47:18,20,21,23 48:1,6,7 55:15,19 56:12 57:1 85:2 125:17 135:21 136:7,12,14 137:3 137:7,10,12 138:2 138:7 preis's 86:21 prejudge 65:10 prejudiced 102:21 preliminary 66:20 76:16 93:10 129:23 131:2,3 133:5 141:6 148:3 148:6,8 165:14 premised 93:10 93:11 premises 72:18 premium 69:6 prepare 76:14 presence 143:5 present 17:17 167:7 presentation 83:3 presentations 46:23 136:19,20 137:18 presenting 136:3 presently 144:18 presents 49:7
---	---	--	--

[preserved - public]

Page 34

<p>preserved 122:8</p> <p>preserves 101:3</p> <p>press 23:15</p> <p>pressed 92:23</p> <p>presumably 100:9</p> <p>pretend 103:11 110:12</p> <p>pretty 43:18 58:23 71:16 77:14 78:22 121:10 157:15</p> <p>prevail 68:11,11 141:16</p> <p>prevailed 38:1</p> <p>prevailing 108:13</p> <p>prevent 124:11</p> <p>previous 85:18</p> <p>previously 52:21 55:7 94:1 119:4 135:21 138:24 142:20 147:6 148:17 153:16 154:22 158:5 163:8,17</p> <p>priced 134:16</p> <p>primarily 23:4 27:14 148:9 153:2</p> <p>primary 46:6 64:16 122:16 136:8</p> <p>principle 70:24 111:9 146:6 164:24</p> <p>principles 77:10 92:1 163:21 164:23</p> <p>prior 27:23 33:5 33:12,18,22 38:13 84:4 98:12 130:24 147:19 148:6,22 164:18</p> <p>priority 154:3,10 155:20</p>	<p>privacy 26:20</p> <p>private 53:17 55:23 100:2</p> <p>privates 55:7,11</p> <p>pro 51:6 57:7 154:21,23 161:16</p> <p>probability 46:18 63:20 121:24 141:14</p> <p>probably 34:4 36:5 58:23 68:11 81:18 84:4 85:1 86:10 87:21 95:4 115:1 120:2 127:4 127:9 128:19</p> <p>problem 25:19 34:4 63:11 64:18 65:9 85:13 105:8 105:16 114:24 115:5 120:14,25 123:3 124:11 128:5 131:13 152:15</p> <p>problems 95:12</p> <p>procedure 98:6</p> <p>procedures 27:1 36:2 42:1 46:12 98:4 99:3 166:9</p> <p>proceed 31:18 97:17,17</p> <p>proceeding 26:16 112:11,17</p> <p>proceedings 113:6 168:8 170:4</p> <p>proceeds 84:11 92:19 96:3 112:4</p> <p>process 32:25 60:1 69:10 98:7 135:1 141:17 145:16 163:10</p> <p>processing 120:19</p> <p>prodigious 90:19</p>	<p>product 164:14</p> <p>professional 35:5 45:25 159:14</p> <p>professions 107:2</p> <p>profits 84:6 102:9</p> <p>program 25:8 52:12</p> <p>programs 30:9</p> <p>progress 59:7 78:6</p> <p>prohibited 129:23</p> <p>prohibition 69:6</p> <p>projects 59:23</p> <p>promise 80:22 119:22 124:21</p> <p>prompt 154:19</p> <p>promptly 24:24 77:22 150:13,14 150:15 166:8</p> <p>proofs 83:23</p> <p>proper 44:5 101:11 107:25 165:3</p> <p>properly 96:16</p> <p>property 39:19 72:5,6,9 87:20 88:6 103:1,20 104:23 105:13 110:14 122:5,6,7 122:8,9,12 144:13 155:5,7,8,21,22</p> <p>proposal 56:20 66:3 90:11 92:21</p> <p>propose 46:24 75:7</p> <p>proposed 29:23 33:9,16 40:8,18 41:1 63:10 76:9 80:14 92:6 100:14 108:2 111:9</p> <p>proposes 165:9</p> <p>proposition 72:19 160:2</p>	<p>propositions 105:5</p> <p>prospect 65:1</p> <p>protections 112:13</p> <p>protracted 164:9</p> <p>proud 114:16,16</p> <p>proved 129:11</p> <p>provide 24:2 54:23 60:3 64:22 87:4 94:25 97:15 152:23 154:23 156:10</p> <p>provided 28:14 63:20 87:23 90:20 92:9 132:6 145:3</p> <p>provides 52:21 58:21 143:7,13 151:12</p> <p>providing 150:17 150:18</p> <p>provision 33:14 34:17 36:18 39:6 61:25 75:18 100:17 107:14 108:3 122:4 129:20 130:23 131:17 132:6 135:8 147:12,18 147:22 148:10,21 153:3 154:13 156:7,19 159:19 159:20 160:5</p> <p>provisions 34:21 37:22 56:8 72:16 101:19 122:21 124:18 147:17</p> <p>proviso 156:12</p> <p>provoked 96:2</p> <p>prudential 145:23 149:20</p> <p>public 50:7 51:22 53:9 55:23 57:23</p>
---	---	--	---

[public - recommended]

Page 35

59:4 88:24 129:18 publicly 50:21 publics 55:8,11 puerto 4:8 purchase 85:7 purdue 1:6 3:6,13 23:3 73:10 84:4 102:9 purely 54:12 purpose 59:4 60:21 61:22 150:6 157:4 purposes 27:3 52:9 61:13 85:20 144:11 147:16 160:11 163:17 pursing 76:24 pursuant 3:3,10 3:15,19,25 4:4,21 5:7,11,17,21 6:3,9 6:13,21 7:1,5,11 7:15 8:5,9,15,19 9:1,5,11,15,21,25 10:6,10,17,21,25 11:6,10,16,20 12:1,5 39:20 46:12 66:7 77:7 130:14 141:22 pursue 51:4 pursued 52:18 pursuing 93:7 101:1 put 33:17 60:5 71:10 78:21 83:11 98:4 99:7 101:15 119:21 128:6 130:11 160:8 putting 51:14 120:18 puzzling 81:3	q quarropas 1:12 quasi 54:11 question 37:18 49:11,16,17 55:20 93:24 97:10 102:24 109:4,12 111:15 112:15 136:16 137:4 140:19 148:23 156:16 questions 44:20 45:4 49:5,14 139:21,24 quick 18:4 126:2 quickly 27:5 77:3 166:19 quirk 18:11 quite 29:19,21 32:23 35:16 40:4 40:7 42:19 44:22 45:19 47:20 64:11 74:2 77:18 102:13 114:7 121:4 122:6 139:3 142:24 145:2 149:17 162:9,15 quoted 163:17 quotidian 38:7 r r 1:21 6:5 12:20 14:1 17:15 18:19 20:23 23:1 170:1 rachael 21:4 rachel 6:5 20:23 racine 21:2 raise 89:4 95:12 115:20 raised 53:23 64:16,17 87:14 96:4 97:22 99:15 105:18 117:15 120:3 127:20	129:14,15 148:14 149:5 161:18 raises 55:2 100:8 140:14 150:7 raising 106:2 110:5 139:12 range 134:2 rant 87:1 rapidly 58:19 rare 124:9 131:11 rata 154:21,23 rationale 87:20 88:5 raymond 138:10 rdd 1:6 reach 48:20 96:10 reached 53:5 123:20 155:25 reaction 91:24 read 33:9 38:11 46:25 47:6 62:15 62:20 66:12,12 81:19 94:16,20 106:24 113:9 115:23 117:23 119:15 124:16 165:24 reading 89:2,24 89:25 164:17 ready 135:6 151:25 real 28:1 85:4 105:22 154:5 realistically 145:13 reality 63:23 64:6 75:3 93:1 124:2 realized 53:12 really 27:10,11 28:1,3 51:22 56:5 59:4 60:7 71:4,10 78:1,18 79:22 80:10 86:1 87:25	88:6,25 93:4 94:4 99:18,23 101:5 102:5 106:22,25 109:25 110:8 111:15 112:15,20 119:9,10,23 122:3 126:1 128:25 141:3 150:8 151:2 163:25 reason 30:25 45:23 54:17 57:16 69:16 71:1 73:3,4 73:17 86:22 90:9 108:8,25 121:3 124:23 131:22 139:12 reasonable 151:21 152:5 reasonableness 68:9 79:7 reasons 35:15 46:16 98:18 128:6 158:18 168:2,3 rebuttal 58:15 61:7 receive 30:1 38:24 99:24 received 83:9 156:22 recipients 144:1 recognition 94:13 94:25 95:3 recognize 36:25 56:2 95:13 recognized 78:5 91:14,20 149:9 157:2,7 160:12 recognizing 24:23 recommendation 136:23 138:19,21 167:6 recommended 143:3
---	--	--	---

recommends 135:20	reimbursement 36:2	released 70:9	remotely 23:4
reconfiguration 118:15	reiterate 26:10	releases 31:12	29:15 40:9 44:12
record 23:20 27:6	62:15 119:1	35:12 41:17,24	46:9 81:12 113:6
48:7 54:20 62:11	140:10 164:16	44:16 57:15 67:9	129:4 167:14
62:13,20 116:15	167:12	69:25 86:6 107:17	removed 30:18
137:25 148:14	reiteration 81:24	107:25 124:9	removes 31:14
160:8 162:19	reject 69:16	145:10	51:5
165:21 170:4	rejected 41:2	relevance 39:25	renders 45:15
recordings 26:17	rejigger 55:10	40:1,5 42:18	reorganization
26:17	rel 12:21	relevant 35:23	39:4,21 45:17
recoverable 84:14	related 2:4,10,15	58:22 85:20 113:4	78:7 99:4
85:14	2:20,25 3:12,21	relief 29:7,8,19,20	repeat 49:15 57:4
recovered 122:6	4:6,11,15,23 5:3	30:5,7,10,14,22	repeatedly 42:9
recoveries 158:15	5:13,23 6:5,15,23	31:11 32:14 35:3	111:19
recovery 118:24	7:7,17,22,25 8:11	44:2 46:16 63:13	repeating 119:16
158:13	8:21 9:7,17 10:2	64:5 81:6,8,23	replaced 30:20
reducing 158:13	10:12,19 11:2,12	92:24 97:13	reply 28:9 29:18
reference 124:17	11:22 12:7,15,19	112:20 113:12,14	37:15 48:4
133:23 165:12	13:1 23:8 59:17	113:16,17 124:18	report 135:2,19
references 165:19	61:10 103:6 105:7	124:25 125:8	164:17 167:6
166:1	105:15 111:18	130:2 145:1	reported 122:13
referred 67:25	112:11 119:17	146:15,17 147:25	reports 89:3
125:17	126:14 143:2	158:19	164:18
referring 65:20	144:7 147:14	reluctantly 29:9	repository 50:17
refers 66:9 155:16	relates 35:24	relying 43:7	143:2
156:24	relation 117:25	remain 42:1 60:18	reprehensible
reflect 74:1	161:4	63:18	106:1
reflected 60:4	relationship	remaining 89:13	represent 28:18
80:21 90:13 100:9	84:19 105:10	157:23,24	114:11,12,14,24
reflects 61:18	relative 41:5 79:2	remains 30:23	115:6,7,7 132:4
142:7 153:14	79:16 90:14	remand 31:16	152:4
refraining 45:8	relatively 44:6	remanded 150:6	representation
regard 26:9 49:5	46:10 77:23 99:17	remarkable 111:7	113:23
49:14,16 50:11	147:2 165:6	142:7 159:11	representative
51:10 54:8 116:14	relayed 133:11	remarkably 49:20	28:16
118:7 145:4	release 34:21 67:3	remarks 81:5	represented
regarding 117:25	71:7,18,20,21	89:18,23 118:9	135:24 143:10
118:5,15	75:8 91:23 92:12	136:17 157:1	161:17
regions 15:4	123:9 146:10	remedies 40:2	represents 28:12
rehab 52:12	147:17 150:24	101:2	60:24 84:10
	157:21	remembered	request 35:11
		29:10	46:10 135:1 145:1
			151:16

[requested - ruled]

Page 37

requested 37:6 44:2 45:4 124:18 126:7 147:17 149:11 require 39:21 96:5 97:7 149:3 151:24 159:2 required 33:2 requirement 33:11 64:22 154:14 156:12 163:15 requirements 158:24 requires 75:10 152:19 166:7 research 84:8 reservation 2:19 reserve 47:9 48:3 58:14 61:6 reserved 102:20 reserving 46:22 reside 116:3 resolicit 74:3 resolicitation 73:21,24 81:12 97:8 resoliciting 75:10 resolution 123:19 resolvable 97:24 resolve 38:3 98:20 99:17 102:8 141:25 150:12,13 resolved 72:2 101:15 123:2,16 142:13 respect 3:9 23:9 29:1 34:1 39:23 42:3 90:23 112:8 112:21 115:19 120:10,11 121:2 121:14 122:2,3 123:21 124:13	126:1,3 128:11 129:13,14 133:1 140:19 141:4 147:2 148:6 150:8 158:2 160:17 166:6 respected 26:20 respects 36:12 146:4 respond 47:10,16 80:1 responding 88:25 response 2:9 47:6 70:15 93:22 responsible 100:1 rest 37:22 43:15 44:20,21 46:1 47:8 58:10 61:6 76:2 79:19 82:9 82:24 88:13 90:14 101:21 108:12,12 110:18 121:6 122:17 153:2 restrained 112:10 rests 43:25 result 27:11 45:5 52:20 63:22 64:4 101:17 102:16 109:21 111:9 149:5 155:20 156:1 160:15 162:22 164:2 resulted 27:23 59:10 142:14 resulting 161:5 results 40:16 149:18 retarding 78:8 retired 67:16 return 51:8 revelation 45:20 reversal 34:21 74:12 107:21	109:5,7,10 132:10 reverse 66:16 131:11 reversed 65:12 66:4,13 124:7 145:8 reverses 49:25 74:19 80:18 97:5 125:4 review 34:7 79:7 reviewing 131:21 revise 44:18 76:10 revised 40:8,10 44:17 76:13 151:23 revisit 46:9 rewards 96:8,8 rice 21:3 richard 21:17 rico 4:8 right 24:16 25:20 26:1,19 32:14,17 32:18,25 34:1 35:10,22 48:1 52:14 56:25 61:12 65:21 66:1 74:10 74:23 75:3 80:9 80:12,14 81:22 82:1,4 83:22 85:6 87:22 94:8 101:7 101:24 106:2,15 107:9 110:20 114:5,7,17 115:2 115:23 116:6,9,25 117:18 119:25 121:19 122:15 123:10 124:2 125:3 126:7 127:6 130:4 132:14,21 135:22 139:6 140:4 141:7,21 144:10 162:12 165:23 166:1,13	166:15 167:4 rights 2:19 30:12 40:2 44:19 56:6 56:19 72:1 102:21 104:23 123:24 142:25 143:1 157:6 163:1 ringer 21:4 ripe 45:1 rise 100:22 101:6 risk 24:13 32:4 63:15,19 158:7,9 158:10,12 risks 30:11 rivera 22:3 road 170:21 robert 1:22 roberto 19:13 robertson 21:5 robust 29:5 role 102:6 110:1 140:6 154:10 room 1:13 rosa 43:5,7,15,17 43:19 158:22 159:8,10 rosen 21:6 roughly 90:7 119:12 143:10,11 144:6,20,20,22 154:20 160:22 161:8 round 30:20 routinely 152:4 roxana 18:13 rule 68:6 75:9 109:25 120:24 135:7 137:1 149:24 150:1,23 154:10 155:20 ruled 104:19 128:13 159:21
--	--	--	---

rules 27:1 64:7 81:11 86:21 88:14 96:6 109:19,24 135:9 150:2 ruling 33:2 35:7 65:3 104:17 121:5 128:13 129:12 131:20,21 136:18 145:15 146:5 148:1,6 150:2,3 150:10,21 151:11 159:5 165:18 166:16 rulings 97:11 113:1 169:3 run 78:15 144:25 rundlet 18:3 21:7 runs 95:17,17 rupert 21:8	103:17 105:9,12 115:9 129:21 138:10 141:15 142:6,10,15 143:6 143:22,22 147:13 148:7 167:7 sacklers 27:14 30:3,5 33:5 36:19 37:12 38:2,11 40:2 50:1,3,11,19 50:23 52:3 53:12 63:25 64:6 69:18 69:20,21,22,23 70:7,9 71:20 79:9 84:13,20 86:7 90:11,12 93:5,12 93:19 94:1 95:18 99:21 111:19,20 112:1,12 113:5,23 122:4,11,18 128:2 129:18 130:13 131:14 132:22 136:2,21 137:21 142:24 144:14 145:5 146:20 148:17 164:4 165:4 sale 112:4 salwen 21:10 samoa 3:23 sander 19:11 sands 102:13 108:20 125:25 sara 18:24 sate 51:25 satisfied 164:14 164:21 satisfies 163:23 saturday 27:12 saul 19:1 savannah 15:22 save 30:4 73:14 125:21 128:21	saw 81:18 95:7 saying 54:20 73:20 76:22 79:14 98:1 113:10 132:8 133:3 134:8 166:19 167:22 says 33:13 47:15 55:25 59:13 64:21 66:1 67:6 91:4 103:20 107:18 117:11 125:6 127:6 128:14,15 129:24 130:22 131:15,20 132:6 135:8 154:14 166:10 scenario 38:9 scenarios 66:24 67:9 schedule 31:19 80:25 scheduled 143:5 scheduling 135:1 scheindlin 156:13 scheme 44:19 schenk 21:11 schlabach 21:12 schlecker 18:2,12 21:13 schmitt 5:15 scholarships 30:9 school 35:15 52:7 schwartzberg 2:21 21:14 scope 29:13 scott 14:8 18:19 scratched 86:11 screen 23:5 26:17 82:5 screenshots 26:16 se 51:6 161:16 searing 26:12	season 83:6 second 15:21 31:16,19 34:22 35:1,7,14,19 36:1 40:13 42:14,15 44:11 45:7 49:14 49:24 51:4 52:17 55:2 57:5 64:6,8 64:10 70:13 74:15 74:19 80:18 88:14 88:15 91:8 97:4 108:17 120:25 121:8,25 125:4,5 127:2 128:7,15 129:24 131:15 144:18 145:16 146:5 147:25 150:25 152:9 156:23 157:18 159:5 162:24 163:3,23 165:1,8 166:3 secondly 113:17 seconds 62:7,13 secretion 129:20 section 23:12 40:9 41:17 46:3 66:9 76:12 107:16 145:18 147:16 152:18,20,21 153:8,18,25 155:3 155:6 157:11 159:4,17,24,25 160:13 162:10 166:7 sections 33:25 44:9 141:23 152:20 secure 99:21 secured 28:17 39:24 42:24 85:9 118:2
s			
s 2:4,10,15,21,25 3:12,21 4:6,12,16 4:23 5:3,13,15,23 6:5,15,23 7:7,17 7:23 8:1,11,21 9:7 9:17 10:2,12,19 11:2,12,22 12:7 12:15,20 13:1 14:1 17:18 18:7 20:4,6 23:1 56:6 154:8 155:15 s.d.n.y. 78:4 145:22,24 155:11 156:15 159:12 161:2 sabatini 21:9 sabine 145:22 sackler 30:8,18 46:17 50:13 51:15 55:8 66:5,15,18 66:22 68:23 69:1 83:8,18 84:19 93:18,22 102:8			

security 74:7 168:2	71:2,3 89:9 94:12 98:25 148:11	10:18,23 11:1,8 11:11,18,21 12:3	155:19 156:3
see 37:11 54:17 55:16,16 66:23 68:6 71:1 75:11 79:24 82:4 86:14 88:5 101:24 118:22 124:17,18 132:2 135:3,4,13 142:12 154:6 155:9 158:11 159:11 161:1,22 161:24,25	separated 153:11 separately 71:21 123:16 september 104:17 117:9 161:24 serious 167:19 168:4 seriously 52:19 84:22 92:23 seriousness 52:18 servant 88:24 services 61:11 119:18 144:8 150:17 160:20,20 163:12	12:6,12,18 23:11 24:21 27:23 29:24 30:3 32:6 38:17 38:23 39:2,22 40:14 44:9 45:8 49:2,5,7,7,9,12,17 53:5,12,18,20,24 55:13,17 56:20 57:17,20,22 59:21 61:9,15 64:14 65:18 66:3 68:14 70:22 71:7,11,23 72:10,15,17 73:7 73:9 75:25 76:10 76:24 80:23 83:5 84:23 87:5,13 93:24 94:6 99:18 101:9 103:7,21 105:14 106:16 111:8,9,16 112:16 114:19 119:12 122:13,15,24 123:8 129:3,16,18 129:22 130:6,8,14 130:17,22 131:1 133:22 134:25 135:5,8,11 136:22 136:23 137:1,14 137:19,20 138:1,6 138:17,18 139:15 140:11 141:7,15 141:18,24 142:20 142:23 143:3,23 144:6,19,24 145:5 146:3,14,23 147:11 148:2,5,7 148:7,10,17,21,24 149:1 151:4 152:5 152:11,12,17 153:5,20,22 154:4 154:5,11 155:18	157:8,10,13,14,16 157:25 158:19,21 159:1 161:7 162:22,23 163:1,4 163:22,22 164:3,5 164:9,12,13,13 165:2,5,9,10 settlement's 164:22 settlements 61:25 72:15 73:14 91:13 91:18 96:4,5,10 154:1 settling 24:25 43:1 61:19 143:9 144:3,15 145:12 147:7 151:19 156:4 158:7 160:9 163:13 seven 23:24 44:23 45:25 severe 87:3,3 shake 75:12 shame 79:16 shannon 20:16 shape 29:14 35:12 36:20 share 41:20 42:4 96:25 shared 126:12,21 127:17 shareholder 39:22 49:12 shareholders 76:10 sharing 99:19 116:3 sheet 2:10,20,25 3:5,12,17,20 4:2,5 4:11,22 5:3,9,12 5:19,22 6:4,11,14 6:22 7:3,6,13,16
seeing 72:3 96:24 116:12	ses 57:7 session 50:25 set 25:2 31:19 34:20 37:15 50:8 54:21 102:4,15 109:19 144:11 145:7,21 146:8,23 147:4,7 151:18 157:12,25		
seek 44:12 146:15 159:17,25	setback 91:22 sets 70:7 settled 38:5,12 48:23 70:14 72:7 72:11 73:6 87:24 87:25 88:1,2,7 105:9 123:5,8,13 123:18 130:11,13 158:5 settlement 2:9,14 2:20,24 3:5,11,17 3:20 4:2,5,11,22 5:2,9,12,19,22 6:4 6:11,14,22 7:3,6 7:13,16,22 8:7,10 8:17,20 9:3,6,13 9:16,23 10:1,8,11		
seeking 36:13 75:14 125:8 148:25 165:7			
seeks 75:23,25 146:15 147:9 151:11 152:21 165:9			
seemingly 43:19			
seen 91:24			
segment 86:13			
seiu 117:6 161:22			
select 42:10 46:5			
self 21:15			
sell 142:16			
sends 52:7			
sense 54:10 62:22 110:7,9,10 120:2 127:1 152:2			
sensitive 24:21 141:13			
sent 33:17 59:2 141:9			
sentence 44:15 132:10			
separate 27:3 37:6 56:7 59:1			

7:22 8:7,10,17,20 9:3,6,13,16,23 10:1,8,11,18,23 11:1,8,11,18,21 12:3,6,12,18 23:12 24:21 25:2 27:10 29:25 31:25 32:15,18 33:9 34:3,9,11,20 35:2 35:21 36:18 37:12 37:22 38:1,6 39:15 40:8,12,24 41:5,17 42:2 43:5 44:8,18 45:15 55:25 56:3 59:13 60:6,19,23 61:9 65:11,19,21 68:8 74:6 75:25 76:7 79:6 80:21 94:15 98:9 102:14 104:22 106:12,16 107:14,16 108:3,9 108:15 111:25 119:15 135:16 138:15 141:24 142:1,7 144:7 146:14,16 147:15 148:10 153:5 157:25 161:12 166:6,7,11,17 shelley 27:17 shepherd 136:8 shepherded 167:3 shifted 102:13 shifting 108:20 125:25 shines 58:23 shkolnik 2:15,25 shock 37:25 shore 21:16,17 short 24:22 28:9 31:24 62:7	shorten 3:8 23:22 24:8,17,19,19 25:3 121:3 169:6 shortening 3:9 23:9 shorter 80:5 shut 82:24 sics 165:25 side 25:11 50:7 53:17 65:12 69:2 69:11 70:5 80:17 123:20 133:15,21 140:16 142:5 143:6 sides 160:14 signature 170:7 signed 38:16 significant 92:16 100:11 significantly 52:20 silence 85:2 86:16 86:16 silent 29:6 31:2 52:25 53:5 similar 36:6 64:5 126:18 129:14 155:20,21 similarly 36:7 53:16 simple 39:5 90:11 109:4 simply 34:6 40:5 44:7 56:6 57:16 62:16 77:5 93:5 109:19 110:7 111:24 115:13,20 117:1,16 120:24 123:6 125:6 140:21 142:19 149:13 152:14 159:10	single 27:12 28:25 32:19 38:4 43:16 121:25 122:23 150:14 sir 62:25 sit 109:20 sitting 40:15 75:4 situated 36:7 75:2 situation 53:7,11 59:21 74:10 75:8 95:14 115:10 six 44:23 49:23 sixth 15:5 51:3 104:14 size 29:13 79:2 skapof 21:18 skikos 21:19 slush 60:7 small 36:6 39:23 48:13 85:15 123:15 165:16 167:15 smith 21:20 smooth 85:11 snapback 101:1,5 snyder 4:24 18:1 soaf 36:23 37:1,17 39:8,15,17,18,19 39:21 40:22,22 43:6,8,11 48:23 51:15,17 52:24 53:6,24 54:3,23 55:3 56:6,19 59:1 59:16 60:5,6,11 60:19 61:9,13 66:6 90:14 97:25 97:25 100:8,14 133:20 140:24,24 140:25 141:4,8 144:2,10,23 147:2 148:12,21 149:4 158:17 160:7,10 162:6 163:16	soafs 140:15 social 126:20 society 51:25 sole 86:5 115:5,5 solely 85:14 86:7 solutions 170:20 somebody 125:18 134:16 somewhat 151:23 sonya 13:25 170:3 170:8 sorkin 21:21 sorry 23:15 25:14 31:7 47:23 85:1 105:22 106:1,9,21 109:25 117:7,8,9 118:13 136:13 150:3,25 157:21 159:4 sort 25:25 29:6 35:9 36:17 42:23 58:19 59:3 67:4 94:16 95:25 96:21 99:23 118:15 123:20 125:9 128:2 129:1 130:11,14 141:10 sorts 168:4 sought 50:13 77:25 81:7,8,24 101:16 113:18,20 158:19 161:12 source 39:13 111:16,17 155:10 sources 69:4 south 9:8 southern 1:2 35:20 sovereigns 121:11 speak 47:8,15 50:23 53:18 62:18 82:8 84:18 100:7 100:24 127:15
--	---	---	---

[speak - substantial]

Page 41

<p>135:14 167:10 speaker 25:20 speakers 85:18 speaking 118:10 137:4,7,23 167:21 speaks 24:4 29:14 special 86:20 specific 50:2 100:12,17 131:22 specifically 71:12 153:7 160:4 162:18 specified 144:4 spell 101:10 spend 29:16 120:2 126:8 spending 79:14 spent 72:24 78:25 118:16 spillover 148:19 spills 78:13 spirit 58:1 spoke 122:23 spuches 3:22 4:7 5:14,24 6:16 7:8 7:18 8:12,22 9:8 9:18 10:3,13 11:3 11:13,23 12:8 13:2,4 spun 71:18 spv 128:14 squared 71:14 stability 96:6 stacey 15:2 stacy 118:1 staff 27:25 stage 97:4 stakeholders 160:24 stand 31:18 57:11 123:6 129:5 standing 36:4 116:19,20 119:2</p>	<p>161:20 stands 29:22 start 25:9 63:3 83:10 84:4 162:15 started 104:13 starting 26:3 158:2 163:19 state 2:11 3:18 4:3 4:19,20,24 5:10 5:14,20,24 6:1,2,6 6:12,16,19,20 7:4 7:8,14 8:8,12,18 8:22 9:4,8,14,18 9:24 10:3,9,13,24 11:3,9,19,23 12:4 12:8,11,13,14,17 12:19,21 13:2 17:2,4,11 24:19 46:6 47:6 48:11 48:13 52:1,1,9,19 57:9 62:17,22 63:2 64:17 70:17 82:14,19 85:15,24 86:8 89:8 101:4 126:19 130:23 142:4 145:13 147:18 150:4,6 stated 27:4 44:7 75:22 111:19 143:3 144:6 148:4 148:9 166:16 statement 6:19 35:24 59:24 60:1 65:12 105:2 152:8 statements 26:13 27:3 28:11 39:12 53:19 62:5 102:16 110:6 115:22 117:17 134:23 143:4 167:8,12,19 states 1:1,11 2:22 14:19 25:1 27:16 28:22 30:8 35:19</p>	<p>37:24 48:13 51:10 51:10,19 52:22,24 61:9,19 63:8 64:1 64:3 69:4,7 70:4 70:18 71:2,5,19 73:5 74:14 77:21 79:15 82:23 83:23 84:2,25 85:1 86:4 89:12,17 95:16 98:5,6 99:4 104:1 105:9,13,20 108:25 109:13 111:6 112:1 116:2 119:22 126:15 129:5,22 130:8 134:4 137:21 142:2 143:16 144:3 145:12 146:20 147:10 148:15 151:19 152:21 153:15 156:20 160:9 162:3,5 163:14 states' 83:22 status 118:3 statute 156:24 statute's 116:17 statutory 160:5 stay 126:22 stayed 52:25 staying 156:18 steage 17:25 steel 77:5,10,20 160:14 stein 155:13 stem 95:10 stems 117:3 step 53:21 60:24 92:3 165:7 stephanie 19:10 steps 97:14,14 165:6</p>	<p>stern 105:7,16 127:21,22 128:5,9 steven 18:5 20:25 21:19 stodola 21:22 stop 27:18 46:24 55:14 69:15 stopped 70:3 stories 135:25 story 123:10 strangely 45:12 strauss 14:11 stream 168:1 streams 123:21 street 1:12 14:21 15:13,21 16:10 17:12 strike 34:6 69:11 strong 154:2 strongly 37:10 68:11 135:20,22 struck 110:16 structure 60:14 61:4 99:6,8 stuff 121:1 sub 43:5,7,15,17 43:19 126:9 158:22 159:8,9 subdivision 48:13 subject 36:1 79:6 112:10,11 147:3 147:10 157:18 165:5 166:9 168:3 submit 165:11 subordination 124:1 subscribe 157:6 subsequent 35:7 70:24 97:4 substance 29:17 substantial 59:6 63:15,19 95:2 150:7 159:19</p>
--	---	---	--

[substantial - term]

Page 42

160:19,25 164:3 substantive 62:23 63:12 90:16 subvert 69:6 succeeded 43:20 success 46:19 95:23 121:24 164:8 successful 32:17 78:7 91:5,10,21 successfully 34:5 successor 72:13 suffered 91:22 sufficiently 43:23 suggest 60:6 92:25 93:19 151:8 suggested 96:12 99:16 120:23 suggestion 100:20 suit 88:7 suite 14:21 16:10 16:17 170:22 sum 57:16 65:6,7 sums 46:8,10,18 sun 21:23 sunday 27:12 super 25:16 29:6 29:6 supplement 117:21 127:5 supplemental 36:22 144:5 148:13 support 29:7 45:24 47:2,7,8 48:3 49:4,22 53:19 61:11 62:5 63:9 86:18 91:17 106:12 119:18 123:14 136:3,5 144:8 150:17 152:3,7 158:4 159:7 164:11	supported 49:23 57:8,12 113:6 118:20 124:6 130:14 158:2 supporters 58:5 supporting 28:10 63:8 164:13 suppose 49:10 supposed 59:22 100:1 sure 24:11 30:24 47:20 55:15 67:17 73:23 82:13 83:24 89:24 91:9 114:7 136:19 140:6,8,9 surface 83:20 84:12 surprise 45:23 57:5 91:25 surprising 98:8 surrounding 92:11 survivors 61:11 118:11 119:18 144:8 150:17 swap 80:21 125:10 swapping 124:20 sympathetic 54:5 57:19 sympathize 95:10 sympathy 28:7 140:10 system 45:20 140:18 systems 120:19 t t 170:1,1 table 71:11 72:7 take 26:13 34:9 43:22 50:12 52:5 62:6 71:1 80:19 90:17 103:25	132:3 134:8 139:20 154:22 157:8,9 158:6,8 158:12 162:16 165:6 taken 84:22 85:3 85:24 118:17 119:8 147:13,15 takeoff 33:1 44:10 125:6 131:13 takes 52:8 83:17 88:4 talk 28:5 29:21 33:23 36:4 81:10 82:25 98:19 112:22 talked 29:3 74:6 130:20 talking 68:21 71:16 78:17 84:23 84:24 103:14 104:5 161:4 tallahassee 17:6 tangentially 149:16 tape 167:25 tate 8:1 15:18,24 114:9 116:8,19,23 117:1,16,19 tate's 117:25 tautology 131:12 tax 71:12 taxes 84:14 tdp 54:10,18 technical 125:12 technically 138:17 teens 134:16 telephone 23:6 telephonically 14:8,9,17,24,25 15:8,16,24 16:6 16:13,20 17:8,15	17:17 tell 135:25 136:1 137:16 telling 43:18 temporarily 37:25 temporary 91:22 ten 67:8 99:22 tend 101:12 tennessee 6:19,24 63:7 term 2:9,20,24 3:5 3:12,17,20 4:2,5 4:11,22 5:2,9,12 5:19,22 6:4,11,14 6:22 7:3,6,13,16 7:22 8:7,10,17,20 9:3,6,13,16,23 10:1,8,11,18,23 11:1,8,11,18,21 12:3,6,12,18 23:12 24:21 25:2 27:10 29:25 31:25 32:15,18 33:9 34:2,9,11,20 35:2 35:21 36:17 37:12 37:22 38:1,6 39:15 40:7,12,24 41:5,17 42:2 43:5 44:8,18 45:14 55:25 56:2 59:12 59:18 60:6,19,23 61:9 65:11,19,21 68:8 70:7 74:6 75:25 76:7 79:6 80:21 94:15 98:9 102:14 104:22 106:12,16 107:14 107:16 108:3,9,15 111:25 119:15 135:16 138:15 141:24 142:1,7 144:2,6 146:14,16
---	--	---	--

147:14 148:10 153:5 157:25 161:12 166:6,7,11 166:17 terms 2:14 4:15 25:2 26:11 29:19 55:17 60:22 64:14 64:20 72:4 76:23 78:9 99:18 121:7 122:16 141:25 143:8 146:21,23 147:11 152:8 154:1 156:9,24 158:23,23,25 165:5 166:8 terrific 25:7 territory 3:22 testified 91:17 testifying 118:10 137:8 testimony 118:9 136:4 texas 6:6,7 63:8 texas's 6:1 thank 25:4 26:7 27:18 46:25 56:12 58:3,4,11 61:6 82:17 87:9 88:9 89:7,20 101:20,22 101:23 102:1 110:25 111:4 114:5 117:18,19 118:4 119:23 120:21 137:3 139:7 141:21 165:15,23 166:20 thanks 56:25 theodore 22:6 theory 66:19 thing 25:16 28:2 33:1 41:7 42:2 43:11 46:2,15 51:3 57:24 59:13	78:25 102:7 108:14 118:18 119:11 125:14 130:4 140:23 141:3 150:20 166:3 things 25:17 32:13,14,24 35:23 36:11 38:2,3 53:4 63:9 75:5,11 97:22 104:24 113:10 114:21 115:1 121:8 127:12 129:17 133:14 134:18 139:11 140:8 151:12 165:16,25 168:4 think 23:23 24:4 24:12 26:11,17,18 27:9 28:13,21 32:23 33:16,18 34:1,18 36:5,12 43:18,22 44:21 45:2 48:1,2 55:11 56:5 58:17,23 59:11,18 61:14,15 61:19,23 62:4,13 62:18,22 63:13 64:18 65:9,14,19 65:20 66:12,17,21 66:25 67:1,2,20 68:3,5,18,24 69:18 70:15,22,23 71:16 72:5,12 73:25 74:2,16,18 75:13,16,22,23 76:1,22,22 77:10 77:16,19 79:1,5 79:17 80:3,4 81:2 81:4,10,17,23 83:15 84:21,21 85:2,4,5,17,17	87:21 89:5 90:6 90:11,13,15 91:4 92:23 93:8 96:17 97:10,12,14,15 98:14 99:16,19 101:12,14,15,24 102:10,15 103:23 104:2 105:15 107:10 108:22 109:1,3 111:10,22 112:7,15 113:13 113:22,22 114:2 115:3,4,11 116:5 116:16,17 117:13 117:14 118:8,16 118:18,22 119:11 119:16 120:1,5 121:9,10,15 123:6 123:7 126:7,12,20 127:2,9,10,16,22 128:22 130:4,5,15 130:18 131:3,7 133:10,12,13,15 133:16,18,20,20 134:16,25 135:3,5 136:4,6,20,22,25 136:25 137:25 138:13,17 139:2,3 139:5,10,11 140:19 141:5,7,9 141:12,13 147:23 155:14 157:15 158:1 163:18 164:1 165:11,17 thinking 89:1 thinks 104:11 third 27:8 37:1,1 39:3 40:15 41:16 42:11,12,16,18 43:1,2,12,12 49:16 50:11 52:23 57:14 67:3,9 70:13 71:7 88:1	91:23 92:11 98:16 103:1,5 123:9,24 124:9 145:7,10 146:10 147:17 150:24,25 155:8 156:5,5 157:20 158:5 thomas 16:17 17:23 18:22 thoroughly 44:2 thought 27:5 33:20 38:8 80:8 88:4 89:1 93:3 96:12 97:24 99:17 100:12 102:11 104:16,18 118:21 123:21 129:25 135:10 thousands 128:18 threading 126:18 threat 49:11 three 38:10 41:3 46:3 49:9 51:6 57:7 88:12 115:25 140:13 148:19 149:25 threw 133:17 throwing 85:10 90:21 105:25 time 3:8 23:23 24:8,21 28:10 43:22 45:2 46:22 47:9 48:3 52:2 58:1 61:7 63:25 64:7 72:3 75:19 78:24 79:1 80:19 81:13 83:11 90:21 96:23 97:6,8 99:23 101:2 102:19 104:17 105:4 111:5 114:6 115:22 120:1 125:3,22 127:22
--	--	--	--

[time - u.s.]

Page 44

129:15 130:6 141:12 155:4 166:22 167:1 times 24:23 46:3 54:20 119:15 124:17 126:5 134:25 timing 56:9,21,24 tiny 126:2 tobacco 59:21 61:24 tobak 21:24 today 23:7 29:7 31:3 33:2 34:4 37:19 44:2,12 48:15 49:1 60:23 61:16 63:23 67:22 68:7 76:6,18 80:5 80:16 81:1,15 87:12 88:10,11 89:6 96:17 97:11 98:11 102:17,21 104:7 105:14 108:2,20 109:21 111:5,10 120:24 121:5,5 122:23 123:2 125:2,24 131:21 135:7 137:1 141:11 162:19 today's 30:5,7,10 30:14,22 31:11 37:14 45:1 46:16 81:6,8 98:12,23 106:17 118:4 todd 2:10 toes 150:21 told 55:5 72:12 tomorrow 26:11 33:3 50:15 118:8 118:19 121:5,5 134:22 135:23 137:5,8 138:16	139:4,22 143:5 166:25 167:5 168:7 tomorrow's 26:6 50:25 136:19,20 140:1,6 tong 54:19 top 65:23 133:21 total 30:2 46:11 134:12 touch 35:12 36:10 105:17 touched 44:16 tower 159:11 townes 21:25 trade 78:22 tragically 52:9,13 trail 83:4 tranches 64:13 transactions 35:4 transcribed 13:25 transcript 27:6 165:17,24 170:4 transfer 38:13 70:11 72:10 83:7 83:20 84:15 88:7 103:21 112:25 123:10 130:10 145:6 transferred 122:9 transfers 71:14 84:6 113:19 114:4 transient 51:25 translate 140:22 transmogrify 39:1 traumas 135:25 treading 150:20 treated 95:7 treatment 39:12 41:3,6 42:3,11 55:18 64:22,25 72:20 78:16	118:14 119:3,14 152:23 153:1 154:13,16 156:10 156:20 157:3,11 162:14 163:17 trek 141:16 tremendous 130:7 140:10 tremendously 51:21 tribal 4:12 tribes 148:20 tried 97:23 tries 104:15 trillion 83:24 84:1 trillions 83:22 triple 35:10 troubled 78:19 true 33:15 60:9,11 90:25 101:4 130:9 141:11 170:4 truly 105:13 trumbull 2:16 trust 42:1 54:22 56:22 66:6 76:17 119:13,14 127:3 143:25 144:23 154:7 trustee 2:22 14:20 57:6 101:24 102:23 103:22 104:2 105:20,23 108:22,25 109:2,3 109:13,14 110:2 126:24 127:20 143:17 trustee's 2:18 57:13 102:4 126:4 trustees 102:3 trusts 70:8 100:2 try 69:5 86:12 89:13 91:9 92:3 97:19 98:20 106:6	trying 65:24 70:4 79:14 93:4 tsai 22:1 tsic 42:13 tsier 22:2 tuned 60:15 tuning 60:2 turn 154:19 161:15 turning 29:17 turns 55:1 tweed 16:1 two 23:7 32:9 35:23 38:10 40:5 42:25 46:8 49:8 50:2 53:3 54:8 58:3 59:12 63:6 66:12 70:6,16 78:21 79:14 83:10 85:22 91:4 92:8 93:11 97:14,14,22 99:23 103:1 108:6 113:10 114:25 115:3 120:13,23 123:21 126:12 129:16 130:3 133:14 134:18 136:6 140:8 141:8 155:14 161:16 165:16 type 37:7 160:12 typos 165:25
u			
u.s. 1:23 2:18 14:20 45:18,20 51:25 57:5,10,13 101:24 102:2,4,23 103:22 105:22 108:21 109:2,3,14 110:1 113:5,5 117:8,8 126:4,24 127:20 143:1 161:23			

<p>u.s.c. 3:4,10,16,19 4:1,4,21 5:8,11,18 5:21 6:3,10,13,21 7:2,5,12,15 8:6,9 8:16,19 9:2,5,12 9:15,22,25 10:7 10:10,17,22,25 11:7,10,17,20 12:2,5 23:12 ubiquitous 38:7 ucc 28:15 48:2 58:25 167:3 ucc's 51:20 ultimately 29:25 39:5 76:23 87:18 91:10 92:13 93:13 95:8 96:20 108:13 111:14 113:22 117:4 141:16 146:11,16 153:4 153:12 154:19 ultra 133:24 134:15 unaltered 41:9 unauthorized 127:7 unavailable 77:11 unavailing 57:3 69:19 unbelievable 26:18 57:22 unbelievably 26:12 80:20 unceasing 27:19 uncertainty 156:8 unchanged 42:2 unclear 111:21 uncomfortable 133:2 uncontested 31:25 37:14,20 49:3</p>	<p>undeniable 31:24 underestimate 50:25 underlying 24:18 27:10 29:17 146:6 164:23 understand 28:6 34:22 35:15 40:20 41:13 53:20,23 54:13 57:18 70:17 71:23 76:8 77:16 79:1,4,20 89:5 93:23 94:6,19,21 94:22 99:11 103:23,25 105:3,6 105:18 109:1 110:6 113:2,21 116:10 117:12 119:7 120:10 121:8 127:1 128:4 128:25 129:10 140:12,13 153:6 166:22 168:5 understandable 37:17 148:13 understandably 150:13 understanding 32:12 137:9,13 141:11 understands 94:2 94:6,7 129:25 understood 56:23 138:2,7 140:6 undertake 26:25 undertaken 29:1 149:12 underwood 2:5 15:16 110:24,25 111:1 112:15 113:10,21 114:5 133:13</p>	<p>underwood's 112:24 undo 55:23 undoubtedly 57:6 unequal 39:3 41:3 78:16 unequally 155:7 unfathomable 57:10 unfortunate 28:5 95:25 unfortunately 86:2 92:16 96:1,7 unfounded 39:13 uniformly 42:10 union 57:9 114:11 unions 114:11 unique 92:8 uniquely 128:1 united 1:1,11 2:22 14:19 30:8 35:19 104:1 105:19 108:25 109:13 129:22 143:16 unity 59:3 60:21 universal 123:14 universally 124:6 130:14 unknown 1:25 unmuted 30:25 unnoticed 90:23 unofficial 27:1 unorthodox 109:23 unquestionably 37:20 49:2 53:20 unready 45:15 unrelated 85:6 unresolved 30:15 30:23,23 unsecured 14:12 28:17 48:8 85:10 103:3</p>	<p>unthinkable 35:14 46:15 125:9 untrue 39:13 upfront 56:8 uphold 163:3 upholding 146:5 upholds 88:18 131:4 upset 133:25 urging 115:17 use 54:9,21,22 60:11 61:14 68:19 84:25 85:15 118:24 141:1 152:5 163:6,8,16 usually 25:18 utah 6:16 uzzi 16:6 138:9,9 138:13,23 139:2,7 139:19,25 140:3</p> <tr> <td colspan="4" style="text-align: center;">v</td></tr> <tr> <td colspan="4"> <p>v 117:4,7 127:21 127:22 128:5,9 154:6 155:15 156:13 161:22,24 vacated 63:15,18 74:11 75:5,19 107:17 145:19 value 32:4 40:16 78:13,14 97:18,20 103:18 143:21,23 154:21 160:24 162:16,19 164:4,4 van 17:24 vanity 59:23 variation 90:8,8 varick 14:21 varied 148:23 various 23:25 26:7 33:25 41:25 45:19 48:10 53:8 60:3 84:25 91:12 144:1 149:15</p> </td></tr>	v				<p>v 117:4,7 127:21 127:22 128:5,9 154:6 155:15 156:13 161:22,24 vacated 63:15,18 74:11 75:5,19 107:17 145:19 value 32:4 40:16 78:13,14 97:18,20 103:18 143:21,23 154:21 160:24 162:16,19 164:4,4 van 17:24 vanity 59:23 variation 90:8,8 varick 14:21 varied 148:23 various 23:25 26:7 33:25 41:25 45:19 48:10 53:8 60:3 84:25 91:12 144:1 149:15</p>			
v											
<p>v 117:4,7 127:21 127:22 128:5,9 154:6 155:15 156:13 161:22,24 vacated 63:15,18 74:11 75:5,19 107:17 145:19 value 32:4 40:16 78:13,14 97:18,20 103:18 143:21,23 154:21 160:24 162:16,19 164:4,4 van 17:24 vanity 59:23 variation 90:8,8 varick 14:21 varied 148:23 various 23:25 26:7 33:25 41:25 45:19 48:10 53:8 60:3 84:25 91:12 144:1 149:15</p>											

[vary - withdraw]

Page 46

vary 148:22 155:18,20 156:12	82:19 84:3 85:25 86:2,11 88:17 89:9 122:25	124:17 125:3,19 126:1 127:4,9 134:20 135:7,24 136:1,12,14,15 139:16 140:1,9 147:24 150:13 166:4 167:12	55:5 84:8 85:18 86:1 91:22 124:23 132:24 133:8,11 138:18
vast 158:9	virginia's 12:17 40:25 86:5	wanted 56:14,16 137:15 140:5	weaving 125:12
veil 70:12	virtually 27:12 28:24 29:11 36:18 39:5 44:5	wants 55:3 82:10 88:17 94:5 109:14 117:21 125:18	weber 22:4
velez 22:3	virtue 55:21	wardwell 14:3 23:21	week 26:15 27:13
veritext 170:20	vision 126:12 127:17	warranted 160:13	weeks 27:11 38:10 140:13
versus 69:3 90:14	vocal 53:3	washington 16:18	weis 22:5
victim 26:6 27:3 53:22 143:4 160:11	voices 167:3	watching 136:2	welcome 125:22
victims 26:19 50:20 51:7 54:21 54:22,24,25 61:11 118:24 119:18 126:14 135:24 136:9 144:9 150:17 163:7,10 163:11 167:2,6,8	void 132:8	waterfall 100:24	welcomed 143:15
victory 142:9	volatile 73:1	wavelength 117:13	welfare 8:2 15:20
video 26:17	vonnegut 3:6,13 14:9 56:15,15,23	wavy 42:25	wells 22:6
view 51:12 52:15 53:11 61:19 75:13 80:13 104:1 113:17 125:1 129:7 134:13 136:10 137:18	vote 86:7 162:13	way 29:13 31:20 32:25 35:11 36:20 45:5 48:15 50:7 51:13 52:2 55:23 57:11 58:2 60:5 60:12 61:3,16,21 67:24 78:14 81:6 81:9,19 85:11,16 91:22 92:3,19 94:8,8 95:6,22 96:3,18 97:17 101:16 102:25 104:18 109:13 111:5 113:12 120:13 126:9 133:23 138:23 139:4 150:23	went 35:15 49:15 51:11 57:3 99:18 99:20 102:25 124:23 130:9
viewed 48:16 144:13	voting 152:8	ways 32:9 66:12 94:12,13,24 105:25 146:12	west 12:17,21 17:11 40:6,25 82:14,19 84:3 85:25 86:2,4,11 88:16 89:8 122:25
village 15:19	wait 47:14	we've 29:4 45:2 48:14,17 50:18	westchester 8:1
violate 27:1 112:17,21 113:5,9 133:3,5 141:8 148:2 152:18	walk 39:7		whatsoever 45:24
violated 33:20 45:22 129:19 153:4 157:3	wall 17:12		whichever 84:24
violates 33:24 49:7 141:5	want 26:7,10 27:18 29:21 32:12 33:7 46:9 47:8,9 47:14,15 48:21 50:2 51:24 54:14 57:6,24 58:6 59:21 62:8 72:18 72:22 74:24 80:9 82:20,20,25 83:1 83:3,14 84:17,20 88:1 89:10,12,15 89:17 90:17 93:25 96:25 97:12 100:20 101:3,25 103:10 104:2 105:19 109:4,6,10 109:11 110:11,12 110:13,24 111:4 114:20 115:24 119:5 120:20		whisper 35:10
violating 129:8			white 1:14 126:20 132:3
violation 40:9 157:11			who've 86:4 134:23
virginia 12:21 17:11 40:7 82:14			wholly 150:9
			willful 110:5
			willing 137:22,23 137:23
			windward 117:2
			wire 38:13
			wish 41:11 140:15 167:14
			withdraw 25:1 31:19 146:22 151:19

[withdrawal - zoom]

Page 47

withdrawal 32:20 35:4	wrong 44:25 45:16 59:25 109:2 116:1,5 134:24
withdrawing 45:10	x
withdrawn 38:14 157:19	x 1:3,9 130:12 169:1
withhold 65:16	xeroxing 120:18
witness 91:16 136:3	y
witnesses 99:10	y 130:12
woke 38:10	yards 16:3
word 44:15 82:2 84:25 87:8,11 120:19 132:3 139:3	yeah 23:19 25:18 32:22 33:15 35:9 36:9 132:11 137:3
words 43:10 130:15	year 101:6
work 48:10,19 51:11 58:2 76:16 77:18,19,20,22,25 79:9 99:10,20 114:17 115:3 127:11 147:1,4 151:22 160:6,12 167:15	years 36:22 43:20 46:8 50:14 53:4 60:15 63:7 73:8 79:14 84:2,4 85:22 91:4 93:11 99:22 100:16,16 100:23 120:11 126:13 130:4 140:13
workaday 39:1	yep 24:15
worked 26:7 37:4 46:20 91:1 127:18	york 1:2 14:6,15 14:22 16:4 17:13 35:20 53:1
working 25:16 26:23 77:8,9 78:9 85:21 166:19	youtube 27:2
works 133:23	yup 135:12
worse 53:13 122:13 125:20 129:19 162:14 163:4	z
worth 76:24 119:16 157:1	zero 32:1,1
wrap 89:13	zoom 23:4 167:16
writing 83:11 116:15	
written 98:10	